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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, July 8, 2008
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 73, No. 128
Wednesday, July 2, 2008

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2007–0104]

Asian Longhorned Beetle; Additions to Quarantined Areas in New York

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Asian longhorned beetle regulations by expanding the boundaries of the quarantined areas in New York and restricting the interstate movement of regulated articles from these areas. The interim rule was necessary to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

DATES: Effective on July 2, 2008, we are adopting as a final rule the interim rule published at 72 FR 46373–46375 on August 20, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Twardowski, Assistant Staff Officer, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1231; (301) 734–5332.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.51–1 through 301.51–9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of Asian longhorned beetle (ALB) to noninfested areas of the United States. Quarantined areas are listed in § 301.51–3(c) of the regulations.

In an interim rule [1] effective and published in the **Federal Register** on August 20, 2007 (72 FR 46373–46375, Docket No. APHIS 2007–0104), we amended the regulations in § 301.51–3 by adding a portion of the Borough of Richmond in the City of New York, NY, to the list of quarantined areas.

Comments on the interim rule were required to be received on or before October 19, 2007. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 72 FR 46373–46375 on August 20, 2007.

Done in Washington, DC, this 25th day of June 2008.

Cindy J. Smith,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–15016 Filed 7–1–08; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the interim rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0104.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0178; Directorate Identifier 2007–NM–366–AD; Amendment 39–15571; AD 2008–13–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank safety standards * * *.

[A]ssessment showed that supplemental maintenance tasks [inspections of various fuel system components such as shields, harnesses, sleeves, and sealant] are required to prevent potential ignition sources inside the fuel system, which could result in a fuel tank explosion. * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective August 6, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 6, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York

11590; telephone (516) 228–7331; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That supplemental NPRM was published in the **Federal Register** on May 1, 2008 (73 FR 23990). That supplemental NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.
>
> The assessment showed that supplemental maintenance tasks [inspections of various fuel system components such as shields, harnesses, sleeves, and sealant] are required to prevent potential ignition sources inside the fuel system, which could result in a fuel tank explosion. Revision has been made to Part 2 ''Airworthiness Limitation Items'' of the DHC–8–400 Maintenance Requirements Manual to introduce the required maintenance tasks.

The corrective action is revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the supplemental NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed in the supplemental NPRM.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a **Note** within the AD.

Costs of Compliance

We estimate that this AD will affect about 38 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $3,040, or $80 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–13–08 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–15571. Docket No. FAA–2008–0178; Directorate Identifier 2007–NM–366–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 6, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Bombardier Model DHC–8–400, DHC–8–401, and DHC–8–402 airplanes, certificated in any category, all serial numbers.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

The assessment showed that supplemental maintenance tasks [inspections of various fuel system components such as shields, harnesses, sleeves, and sealant] are required to prevent potential ignition sources inside the fuel system, which could result in a fuel tank explosion. Revision has been made to Part 2 ''Airworthiness Limitation Items'' of the DHC–8–400 Maintenance Requirements Manual to introduce the required maintenance tasks.

The corrective action is revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 60 days after the effective date of this AD, or before December 16, 2008, whichever occurs first, revise the ALS of the Instructions for Continued Airworthiness to incorporate the inspection requirements of Dash 8 Q400 (Bombardier) Temporary Revision (TR) ALI–69, dated February 9, 2007, to Section 4, ''Fuel System Limitations,'' of Part 2, ''Airworthiness Limitation Items,'' of the Bombardier Dash 8 Q400 Maintenance Requirements Manual, Product Support Manual (PSM) 1–84–7 (''the TR to the MRM''). For all fuel system limitations tasks contained in the TR to the MRM, the initial compliance times start at the later of the ''Threshold'' and ''Grace Period'' times specified in Table 1 of this AD, and the repetitive inspections must be accomplished thereafter at the interval specified in the TR to the MRM, except as provided by paragraphs (f)(2) and (g)(1) of this AD.

TABLE 1.—INITIAL COMPLIANCE TIMES FOR LIMITATION TASKS

Description	Compliance time (whichever occurs later)	
	Threshold	Grace period
Tasks with 18,000 flight hours/108-month inspection intervals.	Before the accumulation of 18,000 total flight hours, or within 108 months since new, whichever occurs first.	Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first.

Note 2: The actions required by paragraph (f)(1) of this AD may be done by inserting a copy of Dash 8 Q400 (Bombardier) TR ALI–69 into the Airworthiness Limitations Section of the Bombardier Dash 8 Q400 MRM PSM1–84–7. When this TR has been included in general revisions of the MRM, the general revisions may be inserted in the MRM, provided the relevant information in the general revision is identical to that in Dash 8 Q400 (Bombardier) TR ALI–69.

(2) After accomplishing the actions specified in paragraph (f)(1) of this AD, no alternative inspections or inspection intervals may be used unless the inspections or inspection intervals are part of a later revision of Bombardier Dash 8 Q400 MRM, PSM 1–84–7, Revision 4, dated October 30, 2003, that is approved by the Manager, New York Aircraft Certification Office (ACO), FAA, or Transport Canada Civil Aviation (TCCA) (or its delegated agent); or unless the inspections or inspection intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (g)(1) of this AD.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *AMOCs:* The Manager, New York ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2007–33, dated December 17, 2007; and Dash 8 Q400 (Bombardier) Temporary Revision ALI–69, dated February 9, 2007, to Section 4, ''Fuel System Limitations,'' of Part 2, ''Airworthiness Limitations Items,'' of the Bombardier Dash 8 Q400 MRM PSM 1–84–7.

Material Incorporated by Reference

(i) You must use Dash 8 Q400 (Bombardier) Temporary Revision ALI–69, dated February 9, 2007, to Section 4, ''Fuel System Limitations,'' of Part 2, ''Airworthiness Limitation Items,'' of the Bombardier Dash 8 Q400 Maintenance Requirements Manual, Product Support Manual 1–84–7, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on June 6, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–13728 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26110; Directorate Identifier 2006–NM–112–AD; Amendment 39–15585; AD 2008–13–22]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 747–400D, and 747–400F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747–400, 747–400D, and 747–400F series airplanes. This AD requires replacement of an electronic flight instrument system/engine indicating and crew alerting system (EFIS/EICAS) interface unit (EIU) located on the E2–6 shelf of the main equipment center with a new or modified EIU. This AD results from two instances where all six integrated display units (IDUs) on the flight deck panels went blank in flight. We are issuing this AD to prevent loss of the IDUs due to failure of all three EIUs, which could result in the inability of the flightcrew to maintain safe flight and landing of the airplane.

DATES: This AD becomes effective August 6, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 6, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jay Yi, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6494; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 747–400, 747–400D, and 747–400F series airplanes. That supplemental NPRM was published in the **Federal Register** on August 23, 2007 (72 FR 48246). That supplemental NPRM proposed to require replacement of an electronic flight instrument system/engine indicating and crew alerting system (EFIS/EICAS) interface unit (EIU) located on the E2–6 shelf of the main equipment center with a new or modified EIU. We issued that supplemental NPRM to propose reducing the compliance time for replacing the EIU.

Compliance With AD 2004–10–05, Amendment 39–13635

We have determined that in order to comply with both this AD and the EIU replacements required by paragraph (d)(1) of AD 2004–10–05, at least one of the three EIUs must be part number (P/N) 622–8589–105 and the other two EIUs may be either P/N 622–8589–104 or P/N 622–8589–105. (The installation of P/N 622–8589–105 is required by paragraph (f) of this AD, and the installation of P/N 622–8589–104 is required by paragraph (d)(1) of AD 2004–10–05.) Boeing has confirmed that P/N 622–8589–104 and P/N 622–8589–105 are fully interchangeable and may be used in any combination. Therefore, we have revised paragraph (h) of this AD accordingly. In addition, we have removed the information that appeared in paragraph (b) of the supplemental NPRM and included it in paragraph (h) of this AD. These changes are necessary to ensure that operators are able to comply with both this AD and AD 2004–10–05, in light of the parts availability constraint.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Support for the Supplemental NPRM

The National Transportation Safety Board (NTSB) supports reducing the compliance time from 60 months to 24 months. The Association of Asia Pacific Airlines (AAPA) supports the intent of the supplemental NPRM.

Request To Extend the Compliance Time

Boeing, Korean Air, Japan Airlines, United Airlines, and the AAPA request that we extend the compliance time to 60 months for replacing at least one EIU. As justification for extending the compliance time, Boeing states that (1) the loss of primary displays has been demonstrated and certified as not being a catastrophic condition, (2) pilots are able to maintain continued safe flight and landing by using backup or standby instruments as certified, and (3) mitigating action has been provided with issuance of the Boeing 747–400 Flight Crew Operations Maintenance Bulletin (OMB) TB1–20, ''Flight Deck Display Unit Blanking Anomaly,'' dated February 25, 2003, to the Boeing 747 Flight Crew Operations Manual. Boeing further states that the EIU manufacturer has advised that it has limited capacity to modify units, which needs to be taken into consideration in the fleet modification plan. Boeing also asserts that most operators will choose to modify all three EIUs simultaneously to ease configuration control and logistics.

AAPA states that its member airlines operate about 50 percent of the affected airplanes worldwide, and that none of its members have reported any blanking of all integrated display units (IDUs). AAPA further states that many of its members have already planned to replace all three EIUs, but that the 24-month compliance time will require them to change their existing retrofit programs to meet the new timeline. AAPA asserts this schedule change could involve removing airplanes from revenue service before scheduled maintenance, thus affecting their operational flexibility (capacity, manpower, and revenue generation). AAPA also states that the capacity of the EIU manufacturer must be considered at the global level, as many operators have already started their replacement programs based on replacing all three EIUs within a 60-month compliance time.

Korean Air states that the 24-month compliance time will impose an excessive burden considering the parts availability constraint. United Airlines and Japan Airlines state that replacing one EIU, instead of all three EIUs, creates a risk that the requirements of the AD could be inadvertently undone at a later time. They further state that replacing all three EIUs, which can be done only within a 60-month compliance time, will ensure that the

requirements of the AD cannot be undone.

We do not agree to extend the compliance time for any of the stated reasons. We also disagree with AAPA's assertion that none of its members have experienced blanking of the IDUs; we have received a report that one of its members experienced losing all IDUs on two Model 747–400 series airplanes. We have determined that a 24-month compliance time is the longest acceptable compliance time for ensuring that an acceptable level of safety is maintained, even with the mitigating action mentioned by Boeing.

While the loss of the primary displays, by itself, is not catastrophic in the same sense as other types of failures such as a major structural failure, it is still considered to be unsafe. When all primary displays are lost, flightcrew access to critical flight management information is denied and flightcrew workload could be significantly increased. In addition to the primary displays of airplane flight and navigation data, such information includes engine monitoring, depiction of hazardous weather and terrain, flightcrew warnings, fuel management, and other vital systems information. Access to this information is critical to the flightcrew's ability to maintain airplane control, positional awareness, and awareness of the airplane's condition. Conversely, a simultaneous loss of all of this information unacceptably degrades the flightcrew's ability to continue safe flight and landing. We have taken AD action on other airplane models that also experienced loss of the primary displays.

We recognize that operators would prefer to replace all three EIUs simultaneously for fleet management reasons, and that replacing only one EIU involves more complicated maintenance planning. However, operators' approved maintenance programs should provide sufficient controls to minimize the risk of releasing airplanes for service in a noncompliant condition. Further, the parts availability constraint will prevent operators from replacing all three EIUs on all affected airplanes within 24 months. The only course of action that likely can be supported with adequate parts availability for a 24-month compliance time is a requirement to replace one EIU. Although under the provisions of paragraph (i) of this AD, we will consider requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. We have revised paragraph (i) of this AD to specify the information that must be submitted with the request.

Request To Require Replacement of All Three EIUs

The NTSB reiterates its concern about requiring replacement of only one EIU. The NTSB states that, despite the intended redundancy of three EIUs, if only one EIU is replaced and that modified EIU suffers an unrelated fault removing it from operation, an airplane is still exposed to the potential for the IDUs to go blank since the other two EIUs would not have the auto-restart capability. The NTSB urges that we continue to work with the EIU manufacturer and operators to ensure that all three EIUs are replaced with new or modified parts in a timely manner.

We infer the NTSB requests that we revise this AD to require replacement of all three EIUs. Although we understand the NTSB's concern, we do not agree to revise this AD. We have performed a risk assessment of a modified EIU failing and have determined that the risk of failure of the modified EIU is remote enough that an acceptable level of safety is maintained by replacing only one EIU. Further, since we have reduced the compliance time, there are only enough modification kits available for all operators to replace one EIU per airplane within the 24-month compliance time. Further, operators have already indicated that, for fleet management reasons, they are likely to replace all three EIUs as more parts become available. Also, the unsafe condition has been further mitigated by the Boeing 747–400 Flight Crew OMB TB1–20, ''Flight Deck Display Unit Blanking Anomaly.'' That document advises flightcrews of the problem and provides instructions for restarting the EIUs should there be a display blanking problem during operation. We have not revised this AD in this regard.

Request To Revise Work-Hour Estimate

AAPA states that the work-hour estimate in the supplemental NPRM is without basis, and that time to remove, install, and test the EIU must be included to accurately determine the time for performing the task. Based on operator experience, AAPA asserts that the EIU modification, replacement, and testing range between 6 to 40 hours per airplane.

We disagree with revising the work hour estimate. The cost information in an AD describes only the direct costs of the specific actions required by this AD. Based on the best data available, the manufacturer provided the number of work hours necessary to do the required actions. This number represents the time necessary to perform only the actions actually required by this AD. We recognize that, in doing the actions required by an AD, operators might incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which might vary significantly among operators, are almost impossible to calculate. Therefore, we have not revised this AD in this regard.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed in the supplemental NPRM.

Costs of Compliance

There are about 639 airplanes of the affected design in the worldwide fleet. This AD affects about 79 airplanes of U.S. registry. The required actions take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Required parts cost about $2,840 per airplane (for one EIU). Based on these figures, the estimated cost of this AD for U.S. operators is $230,680, or $2,920 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on

the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2008–13–22 Boeing: Amendment 39–15585. Docket No. FAA–2006–26110; Directorate Identifier 2006–NM–112–AD.

Effective Date

(a) This AD becomes effective August 6, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–400, 747–400D, and 747–400F series airplanes, certificated in any category; as identified in Boeing Service Bulletin 747–31–2368, Revision 1, dated July 24, 2006.

Unsafe Condition

(d) This AD results from two instances where all six integrated display units (IDUs) on the flight deck panels went blank in flight. We are issuing this AD to prevent loss of the IDUs due to failure of all three electronic flight instrument system/engine indicating and crew alerting system (EFIS/EICAS) interface units (EIUs), which could result in the inability of the flightcrew to maintain safe flight and landing of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Replacement

(f) Within 24 months after the effective date of this AD, replace at least one of the three EIUs, part number (P/N) 622–8589–104, located on the E2–6 shelf of the main equipment center with a new or modified EIU, P/N 622–8589–105, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–31–2368, Revision 1, dated July 24, 2006.

Note 1: Boeing Service Bulletin 747–31–2368, Revision 1, dated July 24, 2006, refers to Rockwell Collins Service Bulletin EIU–7000–31–502, dated March 21, 2006, as an additional source of service information for modifying an EIU by adding auto restart circuitry, which converts EIU P/N 622–8589–104 to P/N 622–8589–105.

Credit for Actions Done According to Previous Service Bulletin

(g) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 747–31–2368, dated November 22, 2005 (Revision 1 of the service bulletin specifies that the original issue is dated December 1, 2005), are acceptable for compliance with the corresponding requirements of paragraph (f) of this AD.

Terminating Action for AD 2004–10–05, Amendment 39–13635

(h) Replacing an EIU with a new or modified EIU in accordance with paragraph (f) of this AD constitutes terminating action for the EIU replacement of paragraph (d)(1) of AD 2004–10–05, provided that the other two EIUs are replaced with EIUs having P/N 622–8589–104 or P/N 622–8589–105. All other actions required by paragraph (d)(1) of AD 2004–10–05 must be complied with.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. We will only grant a compliance time extension for this AD if the requestor can show that it is unable to accomplish the minimum requirements of the AD (i.e., one modified EIU for each airplane) by the compliance time for reasons beyond its control, such as the inability to obtain enough parts to comply with the minimum requirements of the AD by the compliance time. Therefore, requests to extend the compliance time for this AD must include the following information:

(i) How many airplanes are included in the request,

(ii) An inventory of how many modified EIUs the requestor currently has on hand,

(iii) A forecast inventory showing that the requestor will not have enough modified EIUs available to accomplish the minimum AD requirements (i.e., one modified EIU for each airplane) by the AD compliance time, based upon the current inventory on hand and delivery rates from the parts supplier,

(iv) Documentation of supplier delivery commitments for modified EIUs or conversion kits, as applicable, including firm delivery commitment dates, that will provide the requestor with an adequate number of parts to be able to accomplish the minimum AD requirements on its affected airplanes, and

(v) Documentation of maintenance facility schedule availability for accomplishing the AD requirements on all airplanes included in the request. We will not approve AMOC requests that propose replacing or modifying all three EIUs in a time frame longer than 24 months instead of replacing or modifying one EIU within 24 months. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(j) You must use Boeing Service Bulletin 747–31–2368, Revision 1, dated July 24, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 8, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14188 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0012; Directorate Identifier 2007–NM–204–AD; Amendment 39–15584; AD 2008–13–21]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –400ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 767–200, –300, and –400ER series airplanes. This AD requires an inspection to determine the manufacturer and manufacture date of the oxygen masks in the passenger service units and the flight attendant and lavatory oxygen boxes, as applicable. This AD also requires related investigative/corrective actions if necessary. This AD results from a report that several passenger masks with broken in-line flow indicators were found following a mask deployment. We are issuing this AD to prevent the in-line flow indicators of the passenger oxygen masks from fracturing and separating, which could inhibit oxygen flow to the masks and consequently result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event.

DATES: This AD is effective August 6, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 6, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Robert Hettman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6457; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 767–200, –300, and –400ER series airplanes. That NPRM was published in the **Federal Register** on January 14, 2008 (73 FR 2190). That NPRM proposed to require an inspection to determine the manufacturer and manufacture date of the oxygen masks in the passenger service units and the flight attendant and lavatory oxygen boxes, as applicable. That NPRM also proposed to require related investigative/corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the two commenters.

Request To Revise the Relevant Service Information Section

Boeing requests that we revise the Relevant Service Information section of the NPRM to include a general visual inspection of the flow indicator to determine whether the letter ''W'' appears on the right side of the identification (ID) label. Boeing states that this inspection should be included in the NPRM, since the presence of the letter ''W'' on the ID label indicates that the corrective actions have already been accomplished.

We agree to clarify the related investigative and corrective actions required by this AD. If the ID label on the oxygen mask shows that the mask was manufactured by B/E Aerospace between January 1, 2002, and March 1, 2006, then the related investigative action must be done. The related investigative action includes doing a general visual inspection of the flow indicator to determine the color of the flow direction mark and the word ''flow'' on the flow indicator, and to determine whether the letter ''W'' appears on the right side of the ID label. If the flow direction mark and the word ''flow'' on the flow indicator of the oxygen mask are not green and the letter ''W'' is not shown on the right side of the ID label, then the corrective action must be done. The corrective action includes replacing the oxygen mask with one that was not manufactured by B/E Aerospace between January 1, 2002, and March 1, 2006, or with a modified oxygen mask having an improved flow indicator. We have revised paragraph (f) of this AD accordingly. (Boeing Special Attention Service Bulletin 767–35–0054, dated July 6, 2006, refers to B/E Aerospace Service Bulletin 174080–35–01, dated February 6, 2006; and Revision 1, dated May 1, 2006; as additional sources of service information for modifying the oxygen mask assembly by replacing the flow indicator with an improved flow indicator.) The intent of this AD is to accomplish all of the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–35–0054. Since the Relevant Service Information section is not retained in an AD, we have not changed this AD in this regard.

Request To Revise the Discussion Section

Boeing requests that we add a statement to the Discussion section of the NPRM clarifying that only masks manufactured by B/E Aerospace between January 1, 2002, and March 1, 2006, would require corrective action. Boeing states that no further action is required for oxygen masks manufactured outside those dates or manufactured by other suppliers. Boeing also states that not including all of the contents of Boeing Special Attention Service Bulletin 767–35–0054 in this AD, and not clarifying the intent of the AD, will generate many requests for clarification from operators.

We have clarified the requirements of this AD in our response to the previous comment. No additional change to this AD is necessary in this regard, since the Discussion section of the NPRM is not retained in this final rule.

Request To Delete Certain Requirements or Add a Terminating Action

British Airways states that it does not agree with the proposed requirement to replace a discrepant oxygen mask with one having an improved flow indicator because only the oxygen masks identified in Boeing Special Attention Service Bulletin 767–35–0054 are potentially defective. The commenter also states that it has inspected some of its airplanes and replaced all discrepant masks with new masks that do not fall within the rejection criteria. The commenter believes that it should not have to re-inspect the oxygen masks assemblies for the presence of an

improved flow indicator after this AD is issued. The commenter, therefore, requests that we revise this AD in either one of the following ways:

• Delete the phrase from paragraph (f) of this AD that states ''* * * except where the service bulletin specifies installing a new oxygen mask, replace the oxygen mask with a new or modified oxygen mask having an improved flow indicator.''

• Add a statement to this AD specifying that inspections done in accordance with Boeing Special Attention Service Bulletin 767–35–0054 before issuance of this AD comply with the intent of this AD and do not need to be repeated.

We agree that inspections done in accordance with Boeing Special Attention Service Bulletin 767–35–0054 before the effective date of this AD do not need to be accomplished again. However, no change is necessary in this regard, since a similar statement is contained in paragraph (e) of this AD. Further, as stated previously, we have clarified the phrase regarding replacement of the oxygen mask in paragraph (f) of this AD. The intent of that phrase is to provide the option of replacing a discrepant oxygen mask with one that was not manufactured by B/E Aerospace between January 1, 2002, and March 1, 2006, or with a modified oxygen mask having an improved flow indicator in accordance with B/E Aerospace Service Bulletin 174080–35–01.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

There are about 688 airplanes of the affected design in the worldwide fleet. This AD affects about 242 airplanes of U.S. registry. The required actions take about 53 work hours per airplane, with an average of 360 oxygen masks per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $1,026,080, or $4,240 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–13–21 Boeing: Amendment 39–15584. Docket No. FAA–2008–0012; Directorate Identifier 2007–NM–204–AD.

Effective Date

(a) This airworthiness directive (AD) is effective August 6, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, and –400ER series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 767–35–0054, dated July 6, 2006.

Unsafe Condition

(d) This AD results from a report that several passenger masks with broken in-line flow indicators were found following a mask deployment. We are issuing this AD to prevent the in-line flow indicators of the passenger oxygen masks from fracturing and separating, which could inhibit oxygen flow to the masks and consequently result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection and Related Investigative/ Corrective Actions

(f) Within 60 months after the effective date of this AD, do a general visual inspection to determine the manufacturer and manufacture date of the oxygen masks in the passenger service units and the flight attendant and lavatory oxygen boxes, as applicable, and do the applicable related investigative and corrective actions, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–35–0054, dated July 6, 2006; except where the service bulletin specifies installing a new oxygen mask, replace the oxygen mask with one that was not manufactured by B/E Aerospace between January 1, 2002, and March 1, 2006, or with a modified oxygen mask having an improved flow indicator. The related investigative and corrective actions must be done before further flight.

Note 1: The Boeing service bulletin refers to B/E Aerospace Service Bulletin 174080–35–01, dated February 6, 2006; and Revision 1, dated May 1, 2006; as additional sources of service information for modifying the oxygen mask assembly by replacing the flow indicator with an improved flow indicator.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time

for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(h) You must use Boeing Special Attention Service Bulletin 767–35–0054, dated July 6, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 8, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14189 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28434; Directorate Identifier 2007–CE–053–AD; Amendment 39–15580; AD 2008–13–17]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation (Type Certificates No. 3A15, No. 3A16, No. A23CE, and No. A30CE Previously Held by Raytheon Aircraft Company) F33 Series and Models G33, V35B, A36, A36TC, B36TC, 95–B55, D55, E55, A56TC, 58, 58P, 58TC, G58, and 77 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation F33 series and Models G33, V35B, A36, A36TC, B36TC, 95–B55, D55, E55, A56TC, 58, 58P, 58TC, G58, and 77 airplanes. This AD requires you to replace certain circuit breaker toggle switches with improved design circuit breaker toggle switches. This AD results from reports of certain circuit breaker toggle switches used in various electrical systems throughout the affected airplanes overheating. We are issuing this AD to prevent failure of the circuit breaker toggle switch, which could result in smoke in the cockpit and the inability to turn off the switch.

DATES: This AD becomes effective on August 6, 2008.

On August 6, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: To get the service information identified in this AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67291; telephone: (800) 429–5372 or (316) 676–3140.

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov*. The docket number is FAA–2007–28434; Directorate Identifier 2007–CE–053–AD.

FOR FURTHER INFORMATION CONTACT: Jose Flores, Aviation Safety Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4132; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

On June 29, 2007, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Hawker Beechcraft Corporation F33 series and Models G33, V35B, A36, A36TC, B36TC, 95–B55, D55, E55, A56TC, 58, 58P, 58TC, G58, and 77 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 6, 2007 (72 FR 36912). The NPRM proposed to require you to replace certain circuit breaker toggle switches with improved design circuit breaker toggle switches.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Reopen the Comment Period

The American Bonanza Society and six other commenters request more time to further investigate and evaluate replacing all circuit breaker switches in numerous models of Hawker Beechcraft piston airplanes. One commenter requests the extension to better research the number of service difficulty reports (SDRs), the number of airplanes affected, and the availability of replacement switches.

We do not agree with the commenters. The failure mode creates an internal short circuit that will cause overheating. Testing of the circuit breaker switches revealed all the circuit breaker switches are susceptible to the failure mode and overheating.

We have identified an unsafe condition and determined that reopening the comment period will only allow the unsafe condition to potentially go undetected. If any owner/operator identifies an alternative method of compliance (AMOC) to this AD that will provide a level of safety acceptable to the FAA, they can apply for an AMOC using the procedures outlined in 14 CFR 39.19 and this AD.

We are not changing the final rule AD action based on these comments.

Comment Issue No. 2: Change Required Actions

James Blodgett and Adam Dagys suggest that turning off the master switch would better eliminate the problem rather than replacing the circuit breaker switches.

The commenters request that the FAA change the proposed AD action to mandate this change to prevent smoke in the cockpit.

We do not agree with the commenters. Turning off the master switch may mitigate the overheating in some circuit breaker switches. However, in certain flight conditions, removing electrical power could create a more hazardous condition by disabling electrical equipment required for continued safe flight and landing, thus creating an additional unsafe condition.

We are not changing the final rule AD action based on these comments.

Comment Issue No. 3: AD Unwarranted

The American Bonanza Society, the Bonanza Service Ltd., KT Graham Inc., and eight other commenters state that the AD is unwarranted because failure of the affected circuit breaker switches is an uncommon occurrence and that there is no imminent threat to airplane occupants or the public.

The commenters state that they have seen no or very few circuit breaker switch failures in the field. Of the thousands of affected airplanes and over 100,000 circuit breaker switches, none of these resulted in a reportable mishap.

High utilization fleet service has shown there is no significant threat of circuit breaker switch overheat.

The commenters state that the testing done by Hawker Beechcraft and the FAA does not indicate a wider threat of failure, and failure in itself will not bring about a dangerous condition. Also, the only switches tested were those that had been previously squawked for overheating and removed under existing maintenance procedures.

We disagree that an AD is unwarranted. A failed circuit breaker switch creating smoke and possible in-flight fire is considered a hazardous condition. Although failure of these circuit breaker switches is uncommon, we have received reports of failures occurring. The resulting hazardous safety effect combined with the number of occurrences and other factors indicate AD action is necessary. 14 CFR 39.5 states that the ''FAA issues an AD addressing a product when we find that an unsafe condition exists in the product, and the condition is likely to exist or develop in products of the same type design.'' Even though the failures that have happened are uncommon, the condition ''is likely to exist or develop'' on other affected airplanes. Therefore, AD action is necessary to address the unsafe condition following 14 CFR part 39.

We are not changing the final rule AD action based on these comments.

Comment Issue No. 4: AD Is Too Costly

The American Bonanza Society, Bonanza Service Ltd., KT Graham Inc., and seven other commenters state that because of the operational history of the affected airplanes and the uncommon occurrence of failure of the affected circuit breaker switches, the cost per airplane and per fleet appears to be too costly. Operational history does not warrant the cost or impact on the airplane owners/operators.

We do not agree that the AD is not warranted because of the associated cost. We understand that ADs can be costly. However, we have determined that an unsafe condition is likely to exist or develop in other airplanes of the same type design, and the continued operational safety of the affected airplanes must be addressed. Therefore, issuing this AD and not allowing an unsafe condition to go undetected on the affected airplanes overrides the associated cost.

We are not changing the final rule AD action based on these comments.

Comment Issue No. 5: Add Inspection or Testing Before Replacement

Fred von Zabern and Adam Dagys request allowing inspection or testing to identify the overheating switches before replacement.

Using a test or inspection to identify overheating switches may eliminate the need to replace all the switches in any given airplane. It may also eliminate replacing operable (good) switches.

We do not agree with the commenters. Because of the failure mode, an over voltage test or inspection may not identify the failed circuit breaker switch. The failure condition identified is the failure of an internal wire braid that may create a short circuit inside the housing of the circuit breaker switch. The replacement circuit breaker switch includes added insulation around the wire braid to provide increased isolation and prevent the short circuit. We have determined that all the circuit breaker switches identified in the service information are susceptible to the overheating failure condition, and they need to be replaced to address this unsafe condition.

We are not changing the final rule AD action based on these comments.

Comment Issue No. 6: Limit the Applicability of the AD

The Aircraft Owners and Pilots Association (AOPA), the American Bonanza Society, and Bart Sisson request that we limit the applicability of the AD to Baron Models 58, 58G, 58P, and 58TC airplanes. The commenters also request that we limit the AD to the circuit breaker switches used in high electrical load items, such as lighting, taxi lights, and anti-ice equipment.

The commenters state that the SDRs only affect high electrical load items and only Model 58 airplanes. There are no SDRs or operational history to show all circuit breaker switches are susceptible to the overheating. The airworthiness concern sheet identifies only those circuit breaker switches removed from high current circuits on Baron airplane models.

We do not agree with the commenters. Although the circuit breaker switches that were reported, and used for the investigation, were removed from high electrical load items on Baron airplane models, there is no reason to believe the failure mode is limited to high electrical load circuits or Baron models. The failure mode creates an internal short circuit that will cause overheating regardless of the electrical load. Testing of the circuit breaker switches revealed all the circuit breaker switches are susceptible to the failure mode and overheating. Hawker Beechcraft Recommended Service Bulletin SB 24–3807, Issued: May 2007, and Raytheon Aircraft Company Recommended Service Bulletin SB 24–3735, Issued: August 2005, call out all the susceptible circuit breaker switches.

We are not changing the final rule AD action based on these comments.

Comment Issue No. 7: Replacement Parts Not Available

The American Bonanza Society states that there is a shortage of replacement switches available. Manufacturer parts availability shows a shortage of parts. The shortage would not be made up in time to prevent a large number of affected aircraft from being grounded due to the lack of replacement parts at the end of the 12-month compliance time.

We do not agree with the commenter. Hawker Beechcraft has assured us that the replacement parts are either available or could be manufactured within the 12-month compliance time. If there becomes a shortage of parts, we would consider extending the compliance time following the AMOC procedures outlined in 14 CFR 39.19 and this AD.

We are not changing the final rule AD action based on these comments.

Comment Issue No. 8: Promote Education Instead of Issuing a Regulation

The American Bonanza Society suggests an improved level of safety would result from education in lieu of issuing a regulation.

The commenter states that an educational effort to publicize Beech's guidance and generic electrical fire or overheat procedure for pilots whose pilot's operating handbook (POH) does not contain such a checklist would provide the information necessary to detect and respond in the uncommon event of a switch overheat condition. Beech technical support recommends monitoring the switches by feel to detect looseness and heat and to replace any switch that feels loose or hot to the touch.

We do not agree with the commenter. An educational effort may improve awareness to the unsafe condition; however, it would not eliminate the failure mode. The only way to eliminate the failure mode is to replace the affected circuit breaker switches. We have determined that an education effort is insufficient to correct the unsafe condition.

We are not changing the final rule AD action based on these comments.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 10,821 airplanes in the U.S. registry.

We estimate the following costs to do the replacement:

Labor cost	Parts cost	Total cost per circuit breaker toggle switch	Total cost on U.S. operators
1 work-hour × $80 per hour = $80 per circuit breaker toggle switch.	$105 per circuit breaker toggle switch.	$185 for each circuit breaker toggle switch. Each airplane typically has more than 1 circuit breaker toggle switch installed. Some airplanes may have up to 15.	From $2,001,885 to replace one circuit breaker toggle switch per affected airplane up to $30,028,275 to replace 15 circuit breaker toggle switches per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2007–28434; Directorate Identifier 2007–CE–053–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2008–13–17 Hawker Beechcraft Corporation (Type Certificates No. 3A15, No. 3A16, No. A23CE, and No. A30CE previously held by Raytheon Aircraft Company) and Raytheon Aircraft Company: Amendment 39–15580; Docket No. FAA–2007–28434; Directorate Identifier 2007–CE–053–AD.

Effective Date

(a) This AD becomes effective on August 6, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplane models and serial numbers that have a part number (P/N) 35–380132–1 through 35–380132–53 circuit breaker toggle switch installed and are certificated in any category:

Models	Serial Nos.
(1) F33 and G33	CD–1235 through CD–1304.
(2) F33A	CE–290 through CE–1791.
(3) F33C	CJ–26 through CJ–179.
(4) V35B	D–9069 through D–10403.
(5) A36	E–185 through E–3629 and E–3631 through E–3635.
(6) A36TC and B36TC	EA–1 through EA–695.
(7) 95–B55	TC–1913, TC–1936 through TC–2456.
(8) D55	TE–452 through TE–767.
(9) E55	TE–768 through TE–1201.
(10) A56TC	TG–84 through TG–94.
(11) 58	TH–1 through TH–2124.
(12) 58P	TJ–3 through TJ–497.
(13) 58TC	TK–1 through TK–151.

Models	Serial Nos.
(14) G58	TH–2126, TH–2127, TH–2131 through TH–2134, TH–2136, TH–2137, TH–2139 through TH–2141, and TH–2143 through TH–2150.
(15) 77	WA–1 through WA–312.

Unsafe Condition

(d) This AD results from reports of certain circuit breaker toggle switches used in various electrical systems through the affected airplanes overheating. We are proposing this AD to prevent failure of the circuit breaker toggle switch, which could result in smoke in the cockpit and the inability to turn off the switch.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Replace all affected circuit breaker toggle switches specified in paragraph (c) of this AD with an improved circuit breaker toggle switch, P/N 35–380132–61 through 35–380132–113, as applicable.	Within the next 12 months after August 6, 2008 (the effective date of this AD).	As specified in Hawker Beechcraft Recommended Service Bulletin SB 24–3807, Issued: May 2007, and Raytheon Aircraft Company Recommended Service Bulletin SB 24–3735, Issued: August 2005.
(2) Do not install a circuit breaker toggle switch specified in paragraph (c) of this AD.	Before further flight after the replacement required by paragraph (e)(1) of this AD.	Not applicable.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jose Flores, Aviation Safety Engineer, FAA, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4132; fax: (316) 946–4107. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(g) You must use Hawker Beechcraft Recommended Service Bulletin SB 24–3807, Issued: May 2007; and Raytheon Aircraft Company Recommended Service Bulletin SB 24–3735, Issued: August 2005, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67291; telephone: (800) 429–5372 or (316) 676–3140.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on June 16, 2008.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14090 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0225; Directorate Identifier 2007–NM–210–AD; Amendment 39–15583; AD 2008–13–20]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Airplanes Equipped With Rolls Royce RB211–535E Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 757 airplanes equipped with Rolls Royce RB211–535E engines. This AD requires repetitive inspections for signs of damage of the aft hinge fittings and attachment bolts of the thrust reversers, and related investigative and corrective actions if necessary. This AD results from reports of several incidents of bolt failure at the aft hinge fittings of the thrust reversers due to, among other things, high operational loads. We are issuing this AD to prevent failure of the attachment bolts and consequent separation of a thrust reverser from the airplane during flight, which could result in structural damage to the airplane.

DATES: This AD is effective August 6, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 6, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jason Deutschman, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6449; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 757 airplanes equipped with Rolls Royce RB211–535E engines. That NPRM was published in

the **Federal Register** on November 26, 2007 (72 FR 65903). That NPRM proposed to require repetitive inspections for signs of damage of the aft hinge fittings and attachment bolts of the thrust reversers, and related investigative and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request to Include Terminating Action

Continental Airlines (CAL) and Federal Express (FedEx) ask that the preventive modification specified in Boeing Special Attention Service Bulletins 757–54–0049 and 757–54–0050, both dated July 16, 2007, be included in the AD as follows:

CAL asks that a new paragraph be added to clarify that accomplishing the preventive modification provided in Part III of the above referenced service bulletins constitutes terminating action for the repetitive inspections required by paragraph (f) of the NPRM.

FedEx states that the referenced service bulletins specify that the repetitive inspections are no longer necessary once the preventive modification is accomplished. FedEx would like to confirm that accomplishing the preventive modification will terminate any further inspections in the NPRM, and asks that we include the terminating action in the AD.

We agree that clarification is necessary for the reasons provided; therefore, we have added a new paragraph (h) to this AD (and re-identified subsequent paragraphs) to include optional terminating action for paragraph (f) of this AD.

Request To Clarify Applicability

FedEx asks that Model 757–200SF (special freighter) airplanes be added to the applicability specified in paragraph (c) of the NPRM. FedEx states that the NPRM applies to Model 757–200, –200CB, –200PF, and –300 series airplanes equipped with Rolls Royce RB211–535E engines. FedEx states that its airplanes will be modified from the Model 757–200 passenger configuration to a special freighter configuration. FedEx adds that it will submit a supplemental type certificate (STC) to the FAA to confirm the new certification of the airplane after release of this AD.

We do not agree that Model 757–200SF airplanes should be added to the applicability in this AD. The airplanes cited by the commenter are legally known as ''Model 757–200 airplanes'' as identified on the airplane data plate. Even though they might be modified by STC and commonly known as ''special freighters,'' these airplanes continue to be identified by the type certificated model designation. We have made no change to the AD in this regard.

FedEx also asks for clarification of the difference between the effectivity specified in the concurrent service information referenced in paragraph (h) of the NPRM and the applicability in the NPRM. FedEx states that the concurrent service bulletin (Boeing Service Bulletin 757–54–0015, Revision 3, dated September 19, 1996) addresses the replacement of older hinge fittings for airplanes having line numbers 2 through 241.

We provide the following clarification. Paragraph (h) of the NPRM (changed to paragraph (i) in the final rule) requires accomplishing the actions in Boeing Service Bulletin 757–54–0015 prior to or concurrently with accomplishing the actions specified in Boeing Special Attention Service Bulletin 757–54–0049, dated July 16, 2007. Airplanes having line number 242 and subsequent have the production change installed and are covered by paragraph (e) of this AD. The NPRM is applicable to airplanes equipped with Rolls Royce RB211–535E engines; no line numbers are identified. Therefore, we have made no change to the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

There are about 606 airplanes of the affected design in the worldwide fleet. This AD affects about 295 airplanes of U.S. registry. The inspections take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $47,200, or $160 per airplane, per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–13–20 Boeing: Amendment 39–15583. Docket No. FAA–2007–0225; Directorate Identifier 2007–NM–210–AD.

Effective Date

(a) This airworthiness directive (AD) is effective August 6, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200CB, –200PF, and –300 series airplanes, certificated in any category; equipped with Rolls Royce RB211–535E engines.

Unsafe Condition

(d) This AD results from reports of several incidents of bolt failure at the aft hinge fittings of the thrust reversers due to, among other things, high operational loads. We are issuing this AD to prevent failure of the attachment bolts and consequent separation of a thrust reverser from the airplane during flight, which could result in structural damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Repetitive Inspections/Investigative and Corrective Actions

(f) At the time specified in paragraph 1.E. ''Compliance,'' of Boeing Special Attention Service Bulletin 757–54–0049 or 757–54–0050, both dated July 16, 2007, as applicable, except as provided by paragraph (g) of this AD: Do a detailed inspection for signs of damage of the aft hinge fittings and attachment bolts of the thrust reversers by doing all the actions, including all applicable related investigative and corrective actions, as specified in the Accomplishment Instructions of the applicable service bulletin. Do all applicable related investigative and corrective actions at the time specified in paragraph 1.E., ''Compliance,'' of the applicable service bulletin. If any damage is found and the service bulletins specify to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(g) Where Boeing Special Attention Service Bulletins 757–54–0049 and 757–54–0050, both dated July 16, 2007, specify compliance times relative to the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

Optional Terminating Action

(h) Accomplishing the preventive modification specified in Boeing Special Attention Service Bulletin 757–54–0049 or 757–54–0050, both dated July 16, 2007, terminates the repetitive inspections required by paragraph (f) of this AD.

Concurrent Actions

(i) Prior to or concurrently with accomplishing the actions specified in Boeing Special Attention Service Bulletin 757–54–0049, dated July 16, 2007, accomplish the replacement specified in Boeing Service Bulletin 757–54–0015, Revision 3, dated September 19, 1996.

(j) Actions accomplished before the effective date of this AD in accordance with Boeing Service Bulletin 757–54–0015, dated February 16, 1989; Revision 1, dated December 20, 1990; or Revision 2, dated April 21, 1994 are considered acceptable for compliance with the corresponding actions specified in paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(l) You must use the Boeing service information contained in Table 1 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information that is incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Service information	Revision	Date
Boeing Special Attention Service Bulletin 757–54–0015	3	September 19, 1996.
Boeing Special Attention Service Bulletin 757–54–0049	Original	July 16, 2007.
Boeing Service Bulletin 757–54–0050	Original	July 16, 2007.

Issued in Renton, Washington, on June 8, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14190 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0293; Directorate Identifier 2007–NM–287–AD; Amendment 39–15582; AD 2008–13–19]

RIN 2120–AA64

Airworthiness Directives; ATR Model ATR42–200, –300, –320, –500 Airplanes; and Model ATR72–101, –201, –102, –202, –211, –212, and –212A Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A recent incident evidenced that some failures of the Pitot probe heating resistance may not be seen by the low current detection system on aircraft not equipped with [ATR] modification 05469 * * *. In some conditions, an out of tolerance resistance, failing to provide a proper Pitot probe de-icing could not be detected.

* * * * *

The unsafe condition is that undetected icing of the pitot probe could produce incorrect airspeed readings, which could lead to loss of control of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective August 6, 2008. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 6, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 13, 2008 (73 FR 13496). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A recent incident evidenced that some failures of the Pitot probe heating resistance may not be seen by the low current detection system on aircraft not equipped with [ATR] modification 05469 (SB (Service Bulletin) ATR42–30–0072 or ATR72–30–1042). In some conditions, an out of tolerance resistance, failing to provide a proper Pitot probe de-icing could not be detected.

To address this unsafe condition, this Airworthiness Directive (AD) requires repetitive verification of the Pitot probes' resistance and replacement of any defective probes, and ultimate replacement of the three low current sensors for Captain, First Officer and Standby Pitot probes.

The unsafe condition is that undetected icing of the pitot probe could produce incorrect airspeed readings, which could lead to loss of control of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Actions Since the NPRM Was Issued

ATR has issued revisions to two of the service information documents identified in the NPRM: Avions de Transport Regional Service Bulletins ATR42–30–0074 and ATR72–30–1044, both Revision 01, both dated September 26, 2007. We have changed paragraphs (f)(1) and (h) accordingly, and added paragraph (f)(3) to give credit for actions done per the original versions of those service bulletins.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 51 products of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $1,880 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $112,200, or $2,200 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–13–19 ATR—Gie Avions de Transport Régional (Formerly Aerospatiale): Amendment 39–15582. Docket No. FAA–2008–0293; Directorate Identifier 2007–NM–287–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 6, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to ATR Model ATR42–200, –300, –320, and –500 airplanes and Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes; certificated in any category; all serial numbers; except for airplanes having ATR Modification 05469 installed in production, or installed in service in accordance with Avions de Transport Regional Service Bulletin ATR42–30–0072 or ATR72–30–1042, both Revision l, both dated June 1, 2005; as applicable.

Subject

(d) Air Transport Association (ATA) of America Code 30: Ice and Rain Protection.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

A recent incident evidenced that some failures of the Pitot probe heating resistance may not be seen by the low current detection system on aircraft not equipped with [ATR] modification 05469 (SB (Service Bulletin) ATR42–30–0072 or ATR72–30–1042). In some conditions, an out of tolerance resistance, failing to provide a proper Pitot probe de-icing could not be detected.

To address this unsafe condition, this Airworthiness Directive (AD) requires repetitive verification of the Pitot probes' resistance and replacement of any defective probes, and ultimate replacement of the three low current sensors for Captain, First Officer and Standby Pitot probes.

The unsafe condition is that undetected icing of the pitot probe could produce incorrect airspeed readings, which could lead to loss of control of the airplane.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 550 flight hours after the effective date of this AD, measure the heating resistance of the three pitot probes, in accordance with the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–30–0074 or ATR72–30–1044, both Revision 01, both dated September 26, 2007, as applicable. If any resistance exceeds 50 ohms, before next flight, replace the pitot probe in accordance with the Accomplishment Instructions of the applicable service bulletin. Repeat the measurement thereafter at intervals not to exceed 550 flight hours, until the current sensors have been replaced as required by paragraph (f)(2) of this AD.

(2) Within 5,000 flight hours after the effective date of this AD, replace the three pitot probe current sensors, in accordance with the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–30–0072 or ATR72–30–1042, both Revision 1, both dated June 1, 2005, as applicable. Doing this paragraph ends the repetitive inspections required by paragraph (f)(1) of this AD.

(3) Actions are also acceptable for compliance with the requirements of paragraph (f)(1) of this AD if done before the effective date of this AD in accordance with the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–30–0074 or ATR72–30–1044, both dated May 14, 2007, as applicable.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0179, dated July 31, 2007, and the service information described in Table 1 of this AD, for related information.

TABLE 1.—SERVICE INFORMATION

Avions de Transport Regional Service Bulletin	Revision	Date
ATR42–30–0072	1	June 1, 2005.

TABLE 1.—SERVICE INFORMATION—Continued

Avions de Transport Regional Service Bulletin	Revision	Date
ATR42–30–0074	01	September 26, 2007.
ATR72–30–1042	1	June 1, 2005.
ATR72–30–1044	01	September 26, 2007.

Material Incorporated by Reference

(i) You must use the applicable service information specified in Table 2 of this AD to do the actions required by this AD, unless the AD specifies otherwise. Avions de Transport Regional Service Bulletin ATR42–30–0072, Revision, 1 dated June 1, 2005, contains the following effective pages:

Page Nos.	Revision level shown on page	Date shown on page
1, 2	1	June 1, 2005.
3–9	Original	October 21, 2004.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact ATR, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Avions de Transport Regional Service Bulletin	Revision	Date
ATR42–30–0072	1	June 1, 2005.
ATR42–30–0074	01	September 26, 2007.
ATR72–30–1042	1	June 1, 2005.
ATR72–30–1044	01	September 26, 2007.

Issued in Renton, Washington, on June 8, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14191 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0254; Directorate Identifier 2008–NE–06–AD; Amendment 39–15591; AD 2008–13–28]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. ( )HC–( )(2,3)Y(K,R)–2 Two- and Three-Bladed Compact Series Propellers

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Hartzell Propeller Inc. left-hand rotating ( )HC–( )(2,3)Y(K,R)–2 two- and three-bladed, aluminum hub, ''compact'' series propellers, with hubs having a non-suffix serial number, and lubrication holes located on the shoulder of the hub blade socket. These propellers are installed on Lycoming Engines LIO–360 series and LO–360 series reciprocating engines installed on Piper Aircraft, Inc. Seneca PA–34–200 and Seminole PA–44–180, and Hawker Beechcraft Corporation Model 76 Duchess, airplanes. This AD requires initial and repetitive eddy current inspections (ECI), of the area around the lubrication holes of the hub blade sockets. This AD results from four reports of propeller hub cracks, including two in-flight blade separation events. We are issuing this AD to prevent failure of the propeller hub, which could result in blade separation and loss of control of the airplane.

DATES: This AD becomes effective July 17, 2008. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of July 17, 2008.

We must receive any comments on this AD by September 2, 2008.

ADDRESSES: Use one of the following addresses to comment on this AD:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Docket Management Facility, Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tim Smyth, Senior Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; e-mail: *timothy.smyth@faa.gov;* telephone (847) 294–8110; fax (847) 294–7132.

SUPPLEMENTARY INFORMATION: We received four reports of hub cracks initiating from the lubrication holes on ''left-hand'' rotating propellers, including incidents of in-flight blade

separation, in Hartzell two blade ''compact'' series aluminum propellers. These propellers have hubs with a non-suffix serial number, and lubrication holes located on the shoulder of the hub blade socket. We received the most recent report of a cracked hub, in June 2007. The lubrication holes on the ''left-hand'' rotating propeller experience additional stresses not experienced in the lubrication holes on ''right-hand'' rotating propellers. Some of the hub cracks were found during inspection following a report of abnormal vibration or grease leakage. Such a crack typically initiates in the area around the lubrication holes. As a crack spreads across the blade socket, the spreading can accelerate. This condition, if not corrected, could result in failure of the propeller hub which could result in blade separation and loss of control of the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of Hartzell Propeller Inc. Alert Service Bulletin (ASB) No. HC–ASB–61–297, Revision 1, dated November 14, 2007. That ASB describes procedures for performing initial and repetitive ECIs of the propeller hubs for cracks.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Hartzell Propeller Inc. left-hand rotating ( )HC–( )(2,3)Y(K,R)–2 two- and three-bladed compact series propellers of the same type design. For that reason, we are issuing this AD to prevent failure of the propeller hub, which could result in blade separation and loss of control of the airplane. This AD requires an initial ECI of the affected propeller hubs within 50 hours time-in-service (TIS) or 12 months after the effective date of the AD, whichever occurs first. This AD also requires repetitive ECIs of the affected propeller hubs within 50-hour TIS intervals or within 12 months from the previous ECI, whichever occurs first. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. FAA–2008–0254; Directorate Identifier 2008–NE–06–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2008–13–28 Hartzell Propeller Inc.: Amendment 39–15591. Docket No. FAA–2008–0254; Directorate Identifier 2008–NE–06–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 17, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hartzell Propeller Inc. left-hand rotating ( )HC–( )(2,3)Y(K,R)–2 two- and three-bladed, aluminum hub, ''compact'' series propellers, with hubs having a non-suffix serial number (SN), and lubrication holes located on the shoulder of the hub blade socket. These propellers are installed on Lycoming Engines LIO–360 series and LO–360 series reciprocating engines, installed on Piper Aircraft, Inc. Seneca PA–34–200 and Seminole PA–44–180, and Hawker Beechcraft Corporation Model 76 Duchess, airplanes.

(d) The parentheses appearing in the propeller model number indicates the presence or absence of an additional letter(s) that varies the basic propeller model. This AD still applies regardless of whether these letters are present or absent in the propeller model designation.

Unsafe Condition

(e) This AD results from four reports of propeller hub cracks, including two in-flight blade separation events. We are issuing this AD to prevent failure of the propeller hub, which could result in blade separation and loss of control of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Initial Eddy Current Inspection (ECI)

(g) Within 50 hours time-in-service (TIS) or 12 months after the effective date of this AD, whichever occurs first, perform an initial ECI of the area around the lubrication holes of the hub blade sockets.

(h) Use paragraphs 3.A. through 3.A.(3)(d) of Hartzell Propeller Inc. Alert Service Bulletin (ASB) No. HC–ASB–61–297, Revision 1, dated November 14, 2007, to do the initial ECI.

(i) If any cracks are found, remove the propeller hub from service before further flight.

(j) If no cracks are found, mark the propeller using paragraph 3.A.(5)(a) of the Accomplishment Instructions of Hartzell Propeller Inc., ASB No. HC–ASB–61–297, Revision 1, dated November 14, 2007, to indicate compliance with this ASB.

Repetitive ECIs

(k) At repetitive intervals not to exceed 50 hours TIS or 12 months from the previous ECI, whichever occurs first, perform ECIs of the area around the lubrication holes of the hub blade sockets.

(l) Use paragraphs 3.A. through 3.A.(3)(d) of Hartzell Propeller Inc. ASB No. HC–ASB–61–297, Revision 1, dated November 14, 2007, to do the repetitive ECIs.

(m) If any cracks are found, remove the propeller hub from service before further flight.

Optional Terminating Action

(n) As optional terminating action to the repetitive ECIs required by this AD, replace the non-suffix SN propeller hub with a propeller hub identified by an ''A'' or ''B'' suffix letter in the propeller hub SN.

(o) Replacement propeller hub part numbers can be found in paragraph 2.A., Material Information, of Hartzell Propeller Inc. ASB No. HC–SB–61–297, Revision 1, dated November 14, 2007.

Prohibition of Propeller Hub Reuse

(p) After the effective date of this AD, propeller hubs that have a non-suffix SN, or an ''E'' suffix letter in the SN removed from affected propellers in this AD, are not eligible for installation on any engine in any aircraft.

Previous Credit

(q) ECIs of the propeller hubs done before the effective date of this AD that use Hartzell Propeller Inc. ASB No. HC–SB–61–297, dated September 17, 2007, comply with the requirements specified in this AD.

Alternative Methods of Compliance

(r) The Manager, Chicago Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(s) Contact Tim Smyth, Senior Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; e-mail: *timothy.smyth@faa.gov*; telephone (847) 294–8110; fax (847) 294–7132, for more information about this AD.

Material Incorporated by Reference

(t) You must use Hartzell Propeller Inc. Alert Service Bulletin No. HC–ASB–61–297, Revision 1, dated November 14, 2007, to perform the ECIs required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Burlington, Massachusetts, on June 19, 2008.

Diane Cook,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E8–14312 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28053; Directorate Identifier 2007–NE–18–AD; Amendment 39–15590; AD 2008–13–27]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arrius 2F Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

This AD is issued following a case of non-commanded in-flight engine shut-down which occurred on an ARRIUS 2F turboshaft engine, following the seizing of the gas generator. The result may be an emergency autorotation landing or, at worst, an accident.

Investigations of this event have revealed that the seizing of the gas generator was caused by the fracture of the separator cage of the gas generator front bearing, due to high-cycle fatigue cracks initiated in the lubrication slots of the separator cage.

We are issuing this AD to prevent uncommanded shutdown of the engine, which could lead to an accident.

DATES: This AD becomes effective August 6, 2008. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 6, 2008.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov*; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR

part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 28, 2007 (72 FR 49236). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

> This AD is issued following a case of non-commanded in-flight engine shut-down which occurred on an Arrius 2F turboshaft engine, following the seizing of the gas generator. The result may be an emergency autorotation landing, or, at worst, an accident.
>
> Investigations of this event have revealed that the seizing of the gas generator was caused by the fracture of the separator cage of the gas generator front bearing, due to high-cycle fatigue cracks initiated in the lubrication slots of the separator cage.
>
> Modification Tf 12 introduces a new gas generator front bearing without lubrication slots on the separator cage.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Change to the Compliance End Date

We have changed the compliance time from ''at the next shop visit after the effective date of the AD, but no later than April 30, 2008'' to ''at the next shop visit after the effective date of this AD, but no later than 30 days after the effective date of this AD'' to allow the operators more time to complete the requirements of this AD.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

The Mandatory Continuing Airworthiness Information (MCAI) and service information require the operators to comply with the requirements at the next shop visit after the effective date of the AD, but no later than April 30, 2008. We require compliance at the next shop visit after the effective date of this AD, but no later than 30 days after the effective date of this AD.

Costs of Compliance

We estimate that this AD will affect 61 engines of U.S. registry. We also estimate that it will take about 10 work-hours per engine to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $111,440. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $6,846,640. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–13–27 Turbomeca S.A.: Amendment 39–15590. Docket No. FAA–2007–28053; Directorate Identifier 2007–NE–18–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 6, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca S.A. Arrius 2F turboshaft engines that have not incorporated Turbomeca Modification Tf 12A. These engines are installed on, but not limited to, Eurocopter EC120B helicopters.

Reason

(d) European Aviation Safety Agency (EASA) AD No. 2007–0057, dated March 1, 2007, states:

> This AD is issued following a case of non-commanded in-flight engine shut-down which occurred on an Arrius 2F turboshaft engine, following the seizing of the gas generator. The result may be an emergency autorotation landing, or, at worst, an accident.
>
> Investigations of this event have revealed that the seizing of the gas generator was caused by the fracture of the separator cage of the gas generator front bearing, due to high-cycle fatigue cracks initiated in the lubrication slots of the separator cage.
>
> Modification Tf12 introduces a new gas generator front bearing without lubrication slots on the separator cage.

We are issuing this AD to prevent uncommanded shutdown of the engine, which could lead to an accident.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) At the next engine shop visit after the effective date of this AD, but no later than 30 days after the effective date of this AD, replace the engine module 02 with a module that incorporates Turbomeca Modification Tf 12A. Turbomeca Modification Tf 12A installs into the engine module 02 a new gas generator front bearing without lubrication slots on the separator cage.

(2) Use the Instructions to be Incorporated section of Turbomeca Mandatory Service Bulletin No. 319 72 4012, Update No. 1, dated September 19, 2006, to do the actions in paragraph (e)(1) of this AD.

FAA AD Differences

(f) The Mandatory Continuing Airworthiness Information (MCAI) and service information require the operators to comply with the requirements at the next shop visit after the effective date of the AD, but no later than April 30, 2008. We require compliance at the next shop visit after the effective date of this AD, but no later than 30 days after the effective date of this AD.

Other FAA AD Provisions

(g) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to EASA AD 2007–0057, dated March 1, 2007, for related information.

(i) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov*; telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) You must use Turbomeca Mandatory Service Bulletin No. 319 72 4012, Update No. 1, dated September 19, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 74 40 00, fax (33) 05 59 74 45 15.

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Burlington, Massachusetts, on June 18, 2008.

Diane Cook,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E8–14311 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0297; Directorate Identifier 2007–NM–330–AD; Amendment 39–15586; AD 2008–13–23]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During maintenance water has been found in the elevator [assembly].

The unsafe condition is water or ice accumulating in the elevator assembly, which could result in corrosion and consequent reduced structural integrity of the flight control surface, or an unbalanced flight control surface. These conditions could result in reduced controllability of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective August 6, 2008. The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 6, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 13, 2008 (73 FR 13503). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During maintenance water has been found in the elevator [assembly].

The unsafe condition is water or ice accumulating in the elevator assembly, which could result in corrosion and consequent reduced structural integrity of the flight control surface, or an unbalanced flight control surface. These conditions could result in reduced controllability of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 12 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $100 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these

figures, we estimate the cost of this AD to the U.S. operators to be $3,120, or $260 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–13–23 328 Support Services GmbH (Formerly Avcraft Aerospace GmbH): Amendment 39–15586. Docket No. FAA–2008–0297; Directorate Identifier 2007–NM–330–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 6, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Dornier Model 328–100 airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 55: Stabilizers.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During maintenance water has been found in the elevator [assembly]. The unsafe condition is water or ice accumulating in the elevator assembly, which could result in corrosion and consequent reduced structural integrity of the flight control surface, or an unbalanced flight control surface. These conditions could result in reduced controllability of the airplane.

Actions and Compliance

(f) Within 90 days after the effective date of this AD, unless already done, do the following actions. Install a drain hole in the lower skin of the left and right-hand elevator horns in accordance with the Accomplishment Instructions of Avcraft Dornier Service Bulletin SB–328–55–450, Revision 1, dated November 19, 2003.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: Although the MCAI or service information specifies a compliance time for installing the drain hole within 23 days, paragraph (f) of this AD requires that the installation be done within 90 days after the effective date of the AD.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI German Airworthiness Directive D–2004–004, effective January 8, 2004; and Avcraft Dornier Service Bulletin SB–328–55–450, Revision 1, dated November 19, 2003; for related information.

Material Incorporated by Reference

(i) You must use Avcraft Dornier Service Bulletin SB–328–55–450, Revision 1, dated November 19, 2003, to do the actions required by this AD, unless the AD specifies otherwise. (Only the odd-numbered pages of this document contain the document date; no other page of the document contains this information.)

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact 328 Support Services GmbH, Post Box 1252, D–82231 Wessling, Federal Republic of Germany.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on June 7, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14205 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0293; Airspace Docket No. 07–ANM–18]

Establishment of Class E Airspace; Salida, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Salida, CO. Controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Harriet Alexander Field. This will improve the safety of Instrument Flight Rules (IFR) aircraft executing the new RNAV GPS SIAP at Harriet Alexander Field, Salida, CO.

DATES: *Effective Date:* 0901 UTC, September 25, 2008. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Area, 1601 Lind Avenue, SW., Renton, WA, 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On March 28, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Salida, CO, (73 FR 16579). This action would improve the safety of IFR aircraft executing a new RNAV GPS SIAP approach procedure at Harriet Alexander Field, Salida, CO. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9R signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Salida, CO. Controlled airspace is necessary to accommodate IFR aircraft executing a new RNAV (GPS) approach procedure at Harriet Alexander Field, Salida, CO.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAAs authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Harriet Alexander Field, Salida, CO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007 is amended as follows:

Paragraph 6005. Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM CO, E5 Salida, CO [New]

Harriet Alexander Field, CO

(Lat. 38°32′18″ N., long. 106°02′55″ W.)

That airspace extending upward from 700 feet above the surface within a 9.5 mile radius of Harriet Alexander Field.

* * * * *

Issued in Seattle, Washington, on June 18, 2008.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. E8–14939 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9408]

RIN 1545–BD01

Dependent Child of Divorced or Separated Parents or Parents Who Live Apart

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to a claim that a child is a dependent by parents who are divorced, legally separated under a decree of separate maintenance, or separated under a written separation agreement, or who live apart at all times during the last 6 months of the calendar year. The regulations reflect amendments under the Working Families Tax Relief Act of 2004

(WFTRA) and the Gulf Opportunity Zone Act of 2005.

DATES: *Effective Date:* These regulations are effective July 2, 2008.

Applicability Date: For date of applicability, see § 1.152–4(h).

FOR FURTHER INFORMATION CONTACT: Victoria Driscoll (202) 622–4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)) in connection with OMB Control Number 1545–0074. This control number is assigned to all information collections associated with individual tax returns (series 1040 and associated forms and schedules, and related regulatory information collections). Information collections associated with control number 1545–0074 are subject to annual public comment and approval by OMB in accordance with the Paperwork Reduction Act.

The collection of information in these final regulations is in § 1.152–4(e). The information will help the IRS determine if a taxpayer may claim a child as a dependent when the parents of the child are divorced or separated or live apart at all times during the last six months of a calendar year. The collection of information is required to obtain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The information will be reported on IRS Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent, or successor form. The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is included in the estimates shown in the instructions for their individual income tax return.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final amendments to the Income Tax Regulations, 26 CFR part 1, relating to section 152(e) and the entitlement of divorced or separated parents or parents who live apart at all times during the last 6 months of the calendar year to claim a child as a dependent.

On May 2, 2007, a notice of proposed rulemaking (REG–149856–03) was published in the **Federal Register** (72 FR 24192). Written and electronic comments responding to the notice of proposed rulemaking were received. A public hearing was requested and held on April 3, 2008, however, the hearing was adjourned after no speakers appeared. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The comments and revisions are discussed in the preamble.

Explanation of Revisions and Summary of Comments

1. Scope of Section 152(e)

a. Custodial Parent's Failure To Release Exemption

For taxable years beginning before January 1, 2005, section 152(e)(1) provided that a custodial parent generally was entitled to claim the dependency exemption. Thus, if (1) parents of a child were divorced, legally separated, or lived apart during the last 6 months of the taxable year, (2) the child was in the custody of one or both parents for more than one-half of the taxable year, and (3) the child received over one-half of the child's support during the calendar year from one or both parents, the child was treated as receiving over one-half of the child's support from the custodial parent unless an exception applied. Section 152(e)(2) provided an exception treating the child as receiving over one-half of the child's support from the noncustodial parent if the custodial parent released the claim to the exemption.

In contrast, as amended by WFTRA (Pub. L. 108–311, 118 Stat. 1166) for taxable years beginning after December 31, 2004, section 152(e) includes no general rule allowing the custodial parent to claim an exemption for a child. It provides that a child is treated as the qualifying child or qualifying relative of the noncustodial parent if (1) the parents are divorced, legally separated, or live apart during the last 6 months of the taxable year, (2) the child receives over one-half of the child's support during the calendar year from one or both parents, (3) the child is in the custody of one or both parents for more than one-half of the calendar year, and (4) the custodial parent releases the claim to the exemption. Thus, under current section 152(e), the custodial parent's release of the claim is not an exception to a general rule, but is a condition precedent to the application of section 152(e). The proposed regulations include an example illustrating that section 152(e) does not apply if the custodial parent does not release the claim, in which case entitlement to the exemption is determined under section 152(c) or (d).

Commentators suggested that the final regulations should reverse the conclusion of this example. The commentators opined that the final regulations should interpret section 152(e) as if it included the pre-WFTRA general rule and provide that the custodial parent is entitled to the exemption if the custodial parent does not release the claim. The final regulations do not adopt this suggestion because it is inconsistent with the language of section 152(e) as amended by WFTRA.

b. Definition of Custody

Section 152(e) includes two provisions relating to the concept of ''custody:'' (1) Section 152(e) applies only if a child is in the custody of one or both parents for over one-half of the calendar year; and (2) in the absence of a qualified pre-1985 agreement, the noncustodial parent may claim the exemption only if the custodial parent (defined as the parent having custody for the greater portion of the calendar year) releases the claim to the exemption. The proposed regulations do not define the term *custody*.

The lack of a definition of the term *custody* in the proposed regulations may create ambiguity in determining whether section 152(e) applies. For example, a commentator suggested that the final regulations clarify whether a child who has attained the age of majority and is emancipated under state law is in the custody of one or both parents. The final regulations provide that a child is in the custody of one or both parents for more than one-half of the calendar year if one or both parents have the right under state law to physical custody of the child for more than one-half of the calendar year. However, a child is not in the custody

of either parent for purposes of section 152(e), for example, when the child reaches the age of majority under state law. *See Boltinghouse* v. *Commissioner,* T.C.M. 2007–324. The final regulations include an example that illustrates that a child is not in the custody of a parent after the child attains the age of majority and is emancipated under state law.

c. Application of Section 152(e) to Child Residing With Third Party

Section 152(e)(1) provides that, if specified conditions are met, section 152(e) applies notwithstanding the principal place of abode test of section 152(c)(1)(B) and the tiebreaker rule of section 152(c)(4) for a qualifying child, or the support test of section 152(d)(1)(C) for a qualifying relative. A commentator requested that the final regulations clarify whether section 152(c), rather than section 152(e), applies when a child resides with someone other than a parent for more than one-half of the year because of a parent's lengthy absence. The final regulations include additional examples illustrating when section 152(e) applies to determine the right to claim a child as a dependent, and how the nights during which the child resides with a third party may be allocated to a parent.

d. Coordination of Section 152(e) and Other Provisions

The proposed regulations provide that a child who is treated as the qualifying child or qualifying relative of a noncustodial parent under section 152(e) is treated as a dependent of both parents for purposes of sections 105(b), 132(h)(2)(B), and 213(d)(5). Consistent with the statutory language of those provisions, the final regulations clarify that, if section 152(e) does not apply, then this rule treating the child as a dependent of both parents does not apply. Thus, if a custodial parent does not release the claim to the exemption, only the taxpayer who is entitled to claim the child as a dependent under section 152(c) or (d) may treat the child as a dependent for purposes of sections 105(b), 132(h)(2)(B), and 213(d)(5).

2. Definition of Custodial Parent

The proposed regulations define *custodial parent* as the parent with whom the child resides for the greater number of nights during the calendar year (the counting nights rule) and include rules for allocating nights when the child resides with neither parent.

a. Counting Nights Rule

A commentator requested that the final regulations clarify that the counting nights rule applies to determine where a child resides under the tiebreaker rule of section 152(c)(4)(B) as well as to identify the custodial parent for purposes of section 152(e). The tiebreaker rule of section 152(c)(4)(B) is outside the scope of these regulations and therefore is not addressed.

Commentators requested clarification of the term *night* for purposes of the counting nights rule. A commentator noted that the rule does not address how the child's residence for a night is determined (for example, by the child's physical location at a given time such as midnight, or by where the child sleeps) and for which year the night of December 31 to January 1 is counted.

In response to this comment, the final regulations provide that, for purposes of section 152(e), a child resides for a night with a parent if the child sleeps (1) at the parent's residence (whether or not the parent is present), or (2) in the company of the parent when the child does not sleep at a parent's residence (for example, if the parent and child are on vacation). Under this rule, the time that a child goes to sleep is irrelevant. The final regulations provide that a night that extends over two taxable years is allocated to the taxable year when the night begins. Thus, the night that begins on December 31, 2008, is counted for taxable year 2008.

Commentators suggested that the counting nights rule may be inequitable in certain situations, for example if a parent works nights and cares for the child during the day, and the other parent works days and cares for the child at night. Under the counting nights rule, the parent who cares for the child at night is the custodial parent although the other parent may spend more time with the child. A commentator opined that the counting nights rule should create only a rebuttable presumption regarding which parent is the custodial parent.

Defining custodial parent by means of a rebuttable presumption would add complexity and uncertainty and increase the potential for controversy. As a ''bright-line'' test, the counting nights rule is easy to understand and apply. The statute and regulations provide flexibility by allowing the custodial parent to release the claim to the exemption. Nonetheless, the final regulations allow an exception for cases in which a child resides for a greater number of days but not nights with a parent who works at night.

b. Allocation of Nights

The proposed regulations provide that a child who resides with neither parent for a night is treated as residing with the parent with whom the child would have resided for the night but for the absence. However, if a child would not have resided with either parent (for example, because a court awarded custody of the child to a third party for the period of absence), the child is treated as not residing with either parent for the night of the absence.

A commentator suggested that the final regulations omit the language ''for example'' and provide that an award of custody to a third party is the exclusive circumstance in which a night is not allocated to either parent. The final regulations do not incorporate this suggestion, as other situations may occur in which a child would not have resided with either parent for a night. However, the final regulations omit the parenthetical and illustrate this situation in the examples. Other commentators noted additional circumstances in which it would be difficult to determine the parent with whom a child would have resided for the night. Therefore, the final regulations provide that a night is not counted for either parent if the child would not have resided with either parent for the night or it cannot be determined with which parent the child would have resided for the night.

Commentators requested that the final regulations address how nights are allocated in additional situations involving a child's absence. The final regulations provide additional examples in response to these comments.

A commentator asked how a night is allocated in situations involving the absence of a parent, for example, if a child spends the night in a parent's residence in the care of a third party, but the parent is absent. Another commentator requested clarification on how a night is allocated if a child is scheduled to reside with one parent but, because of unexpected circumstances (such as that parent's unplanned absence) the child resides with the other parent for that night. These comments are addressed by the addition in the final regulations of the rule, discussed earlier in this preamble, that a child resides with a parent for a night if the child sleeps (1) at the residence of the parent (whether or not the parent is present), or (2) in the company of the parent, when the child does not sleep at a parent's residence.

3. Release of Exemption and Revocation of Release

a. Release of Claim to Exemption

Section 152(e)(2) provides that a custodial parent may release a claim to an exemption for a child by signing a

written declaration that he or she will not claim the child as a dependent. The proposed regulations provide that the written declaration may be made on Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent, or successor form, and any declaration not on Form 8332 must conform to the substance of that form. The proposed regulations also provide that a court order or decree may not serve as the written declaration.

A commentator asserted that the final regulations should allow a noncustodial parent to claim a child as a dependent if a divorce decree allocates the exemption to that parent, whether or not the custodial parent releases the right to claim the child. Another commentator suggested that presumptions in favor of the custodial parent in the proposed regulations unfairly burden the noncustodial parent.

A state court may not allocate an exemption because sections 151 and 152, not state law, determine who may claim an exemption for a child for Federal income tax purposes. Section 152(e) provides for the unilateral release of an exemption by a custodial parent. Therefore, the final regulations do not adopt these comments.

Commentators suggested that the final regulations should specify that a written separation agreement may not serve as the written declaration. One commentator recommended that the final regulations provide that the release must be on Form 8332 or that the release may be on either Form 8332 or a document that is executed for the sole purpose of releasing the claim. Other commentators opined, however, that the final regulations should provide specifically that a separation agreement that includes an unconditional release or a divorce decree may serve as a written declaration. A commentator suggested that a divorce settlement agreed to by both parents should determine the right to claim a child as a dependent without regard to which parent is the custodial parent and without requiring a separate written declaration.

Divorce decrees, separation agreements, and similar instruments are complex documents that may be subject to differing interpretations governed by state law. Allowing these documents to serve as a written declaration creates complexity and uncertainty. Therefore, the final regulations retain the rule that a written declaration not on Form 8332 (or successor form) must conform to the substance of Form 8332, and further provide that a release not on a Form 8332 must be a document executed for the sole purpose of releasing the claim. The final regulations provide specifically that a court order or decree or a separation agreement may not serve as the written declaration. These rules will improve tax administration and reduce controversy.

The proposed regulations provide that if a release of a claim to a child is for more than one year, the noncustodial parent must attach the original written declaration to the parent's return for the first taxable year for which the release is effective and a copy of the written declaration for later years. A commentator requested that the final regulations allow a taxpayer to attach a copy of a declaration (rather than the original) to a tax return in the first year the release is effective as well as subsequent years. The final regulations adopt this comment.

b. Revocation of Release of Exemption

Under the proposed regulations, Form 8332 or a substitute document may be executed for multiple years. Further, to provide flexibility to parents whose circumstances change, the proposed regulations allow a custodial parent to revoke a release, but the revocation may be effective no earlier than the taxable year that begins in the first calendar year after the calendar year in which the parent revoking the release provides notice of the revocation to the other parent. Commentators objected to the custodial parent's broad discretion to revoke a release under the proposed regulations. A commentator recommended that the final regulations provide that a taxpayer may revoke a release only if both parents agree. Section 152(e) provides for the unilateral release of an exemption by a custodial parent. The final regulations retain the rule allowing unilateral revocation by the custodial parent as consistent with the statute.

A commentator suggested that a revocation should take effect in the taxable year that the parent signs the revocation. The final regulations do not adopt this comment, which could result in insufficient notice of the revocation to the noncustodial parent and increase controversies.

The proposed regulations also provide that the taxpayer revoking the release must attach the original or a copy of the revocation to the taxpayer's tax return for any taxable year the taxpayer claims the exemption as a result of the revocation, and keep a copy of the revocation and evidence of delivery of written notice of revocation to the noncustodial parent. A commentator recommended that the final regulations require the custodial parent to send a copy of the written revocation to the noncustodial parent at the last known address or at an address reasonably calculated to ensure receipt. The commentator opined that proof of mailing by certified mail or other tracked delivery should suffice as evidence of notification. Another commentator expressed concern that a parent whose location is unknown may not receive notice of a revocation.

To retain flexibility but increase the likelihood that a noncustodial parent will receive notice of a revocation, the final regulations require that the parent revoking the release notify, or make reasonable attempts to notify, in writing, the other parent of the revocation. What is a reasonable attempt is determined under the facts and circumstances, but mailing a copy of the written revocation to the noncustodial parent at the last known address or at an address reasonably calculated to ensure receipt satisfies this requirement.

A commentator recommended that the final regulations provide that a release may be revoked only on a Form 8332. Consistent with the requirements for a release, the final regulations provide that (1) a revocation may be made on Form 8332, or successor form designated by the IRS, (2) a revocation not on the designated form must conform to the substance of the form and be in a document executed for the sole purpose of revoking a release, and (3) a taxpayer revoking a release may attach a copy rather than an original to the taxpayer's return for the first taxable year the revocation is effective, as well as for later years.

c. Releases Predating Applicability Date

The proposed regulations do not address whether the rules for releasing a claim to an exemption and for revoking a release apply to a written declaration that is effective for multiple years and that was executed before the applicability date of the regulations. The final regulations apply prospectively, but clarify that a multiple year written declaration executed in a taxable year beginning on or before July 2, 2008, that satisfies the requirements for the form of a written declaration in effect at the time the written declaration is executed is treated as satisfying the requirements for the form of a release under the final regulations. However, the final regulations provide that the rules for revoking a release of a claim to an exemption apply without regard to whether a custodial parent executed the release in a taxable year beginning on or before July 2, 2008. Thus, a release executed in a taxable year beginning on or before *July 2, 2008*, may be revoked.

4. Effective/Applicability Date

These final regulations apply to taxable years beginning after *July 2, 2008.*

Special Analyses

This Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Victoria J. Driscoll of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendment to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.152–4 also issued under 26 U.S.C. 152(e) * * *

■ **Par. 2.** Section 1.152–4 is revised to read as follows:

§ 1.152–4 Special rule for a child of divorced or separated parents or parents who live apart.

(a) *In general.* A taxpayer may claim a dependency deduction for a child (as defined in section 152(f)(1)) only if the child is the qualifying child of the taxpayer under section 152(c) or the qualifying relative of the taxpayer under section 152(d). Section 152(c)(4)(B) provides that a child who is claimed as a qualifying child by parents who do not file a joint return together is treated as the qualifying child of the parent with whom the child resides for a longer period of time during the taxable year or, if the child resides with both parents for an equal period of time, of the parent with the higher adjusted gross income. However, a child is treated as the qualifying child or qualifying relative of the noncustodial parent if the custodial parent releases a claim to the exemption under section 152(e) and this section.

(b) *Release of claim by custodial parent*—(1) *In general.* Under section 152(e)(1), notwithstanding section 152(c)(1)(B), (c)(4), or (d)(1)(C), a child is treated as the qualifying child or qualifying relative of the noncustodial parent (as defined in paragraph (d) of this section) if the requirements of paragraphs (b)(2) and (b)(3) of this section are met.

(2) *Support, custody, and parental status*—(i) *In general.* The requirements of this paragraph (b)(2) are met if the parents of the child provide over one-half of the child's support for the calendar year, the child is in the custody of one or both parents for more than one-half of the calendar year, and the parents—

(A) Are divorced or legally separated under a decree of divorce or separate maintenance;

(B) Are separated under a written separation agreement; or

(C) Live apart at all times during the last 6 months of the calendar year whether or not they are or were married.

(ii) *Multiple support agreement.* The requirements of this paragraph (b)(2) are not met if over one-half of the support of the child is treated as having been received from a taxpayer under section 152(d)(3).

(3) *Release of claim to child.* The requirements of this paragraph (b)(3) are met for a calendar year if—

(i) The custodial parent signs a written declaration that the custodial parent will not claim the child as a dependent for any taxable year beginning in that calendar year and the noncustodial parent attaches the declaration to the noncustodial parent's return for the taxable year; or

(ii) A qualified pre-1985 instrument, as defined in section 152(e)(3)(B), applicable to the taxable year beginning in that calendar year, provides that the noncustodial parent is entitled to the dependency exemption for the child and the noncustodial parent provides at least $600 for the support of the child during the calendar year.

(c) *Custody.* A child is in the custody of one or both parents for more than one-half of the calendar year if one or both parents have the right under state law to physical custody of the child for more than one-half of the calendar year.

(d) *Custodial parent*—(1) *In general.* The *custodial parent* is the parent with whom the child resides for the greater number of nights during the calendar year, and the *noncustodial parent* is the parent who is not the custodial parent. A child is treated as residing with neither parent if the child is emancipated under state law. For purposes of this section, a child resides with a parent for a night if the child sleeps—

(i) At the residence of that parent (whether or not the parent is present); or

(ii) In the company of the parent, when the child does not sleep at a parent's residence (for example, the parent and child are on vacation together).

(2) *Night straddling taxable years.* A night that extends over two taxable years is allocated to the taxable year in which the night begins.

(3) *Absences.* (i) Except as provided in paragraph (d)(3)(ii) of this section, for purposes of this paragraph (d), a child who does not reside (within the meaning of paragraph (d)(1) of this section) with a parent for a night is treated as residing with the parent with whom the child would have resided for the night but for the absence.

(ii) A child who does not reside (within the meaning of paragraph (d)(1) of this section) with a parent for a night is treated as not residing with either parent for that night if it cannot be determined with which parent the child would have resided or if the child would not have resided with either parent for the night.

(4) *Special rule for equal number of nights.* If a child is in the custody of one or both parents for more than one-half of the calendar year and the child resides with each parent for an equal number of nights during the calendar year, the parent with the higher adjusted gross income for the calendar year is treated as the custodial parent.

(5) *Exception for a parent who works at night.* If, in a calendar year, due to a parent's nighttime work schedule, a child resides for a greater number of days but not nights with the parent who works at night, that parent is treated as the custodial parent. On a school day, the child is treated as residing at the primary residence registered with the school.

(e) *Written declaration*—(1) *Form of declaration*—(i) *In general.* The written declaration under paragraph (b)(3)(i) of this section must be an unconditional release of the custodial parent's claim to the child as a dependent for the year or years for which the declaration is effective. A declaration is not unconditional if the custodial parent's release of the right to claim the child as

a dependent requires the satisfaction of any condition, including the noncustodial parent's meeting of an obligation such as the payment of support. A written declaration must name the noncustodial parent to whom the exemption is released. A written declaration must specify the year or years for which it is effective. A written declaration that specifies all future years is treated as specifying the first taxable year after the taxable year of execution and all subsequent taxable years.

(ii) *Form designated by IRS.* A written declaration may be made on Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent, or successor form designated by the IRS. A written declaration not on the form designated by the IRS must conform to the substance of that form and must be a document executed for the sole purpose of serving as a written declaration under this section. A court order or decree or a separation agreement may not serve as a written declaration.

(2) *Attachment to return.* A noncustodial parent must attach a copy of the written declaration to the parent's return for each taxable year in which the child is claimed as a dependent.

(3) *Revocation of written declaration*—(i) *In general.* A parent may revoke a written declaration described in paragraph (e)(1) of this section by providing written notice of the revocation to the other parent. The parent revoking the written declaration must make reasonable efforts to provide actual notice to the other parent. The revocation may be effective no earlier than the taxable year that begins in the first calendar year after the calendar year in which the parent revoking the written declaration provides, or makes reasonable efforts to provide, the written notice.

(ii) *Form of revocation.* The revocation may be made on Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent, or successor form designated by the IRS whether or not the written declaration was made on a form designated by the IRS. A revocation not on that form must conform to the substance of the form and must be a document executed for the sole purpose of serving as a revocation under this section. The revocation must specify the year or years for which the revocation is effective. A revocation that specifies all future years is treated as specifying the first taxable year after the taxable year the revocation is executed and all subsequent taxable years.

(iii) *Attachment to return.* The parent revoking the written declaration must attach a copy of the revocation to the parent's return for each taxable year for which the parent claims a child as a dependent as a result of the revocation. The parent revoking the written declaration must keep a copy of the revocation and evidence of delivery of the notice to the other parent, or of the reasonable efforts to provide actual notice.

(4) *Ineffective declaration or revocation.* A written declaration or revocation that fails to satisfy the requirements of this paragraph (e) has no effect.

(5) *Written declaration executed in a taxable year beginning on or before July 2, 2008.* A written declaration executed in a taxable year beginning on or before July 2, 2008, that satisfies the requirements for the form of a written declaration in effect at the time the written declaration is executed, will be treated as meeting the requirements of paragraph (e)(1) of this section. Paragraph (e)(3) of this section applies without regard to whether a custodial parent executed the written declaration in a taxable year beginning on or before July 2, 2008.

(f) *Coordination with other sections.* If section 152(e) and this section apply, a child is treated as the dependent of both parents for purposes of sections 105(b), 132(h)(2)(B), and 213(d)(5).

(g) *Examples.* The provisions of this section are illustrated by the following examples that assume, unless otherwise provided, that each taxpayer's taxable year is the calendar year, one or both of the child's parents provide over one-half of the child's support for the calendar year, one or both parents have the right under state law to physical custody of the child for more than one-half of the calendar year, and the child otherwise meets the requirements of a qualifying child under section 152(c) or a qualifying relative under section 152(d). In addition, in each of the examples, no qualified pre-1985 instrument or multiple support agreement is in effect. The examples are as follows:

Example 1. (i) B and C are the divorced parents of Child. In 2009, Child resides with B for 210 nights and with C for 155 nights. B executes a Form 8332 for 2009 releasing B's right to claim Child as a dependent for that year, which C attaches to C's 2009 return.

(ii) Under paragraph (d) of this section, B is the custodial parent of Child in 2009 because B is the parent with whom Child resides for the greater number of nights in 2009. Because the requirements of paragraphs (b)(2) and (3) of this section are met, C may claim Child as a dependent.

Example 2. The facts are the same as in *Example 1* except that B does not execute a Form 8332 or similar declaration for 2009. Therefore, section 152(e) and this section do not apply. Whether Child is the qualifying child or qualifying relative of B or C is determined under section 152(c) or (d).

Example 3. (i) D and E are the divorced parents of Child. Under a custody decree, Grandmother has the right under state law to physical custody of Child from January 1 to July 31, 2009.

(ii) Because D and E do not have the right under state law to physical custody of Child for over one-half of the 2009 calendar year, under paragraph (c) of this section, Child is not in the custody of one or both parents for over one-half of the calendar year. Therefore, section 152(e) and this section do not apply, and whether Child is the qualifying child or qualifying relative of D, E, or Grandmother is determined under section 152(c) or (d).

Example 4. (i) The facts are the same as in *Example 3,* except that Grandmother has the right to physical custody of Child from January 1 to March 31, 2009, and, as a result, Child resides with Grandmother during this period. D and E jointly have the right to physical custody of Child from April 1 to December 31, 2009. During this period, Child resides with D for 180 nights and with E for 95 nights. D executes a Form 8332 for 2009 releasing D's right to claim Child as a dependent for that year, which E attaches to E's 2009 return.

(ii) Under paragraph (c) of this section, Child is in the custody of D and E for over one-half of the calendar year, because D and E have the right under state law to physical custody of Child for over one-half of the calendar year.

(iii) Under paragraph (d)(3)(ii) of this section, the nights that Child resides with Grandmother are not allocated to either parent. Child resides with D for a greater number of nights than with E during the calendar year and, under paragraph (d)(1) of this section, D is the custodial parent.

(iv) Because the requirements of paragraphs (b)(2) and (3) of this section are met, section 152(e) and this section apply, and E may claim Child as a dependent.

Example 5. (i) The facts are the same as in *Example 4,* except that D is away on military service from April 10 to June 15, 2009, and September 6 to October 20, 2009. During these periods Child resides with Grandmother in Grandmother's residence. Child would have resided with D if D had not been away on military service. Grandmother claims Child as a dependent on Grandmother's 2009 return.

(ii) Under paragraph (d)(3)(i) of this section, Child is treated as residing with D for the nights that D is away on military service. Because the requirements of paragraphs (b)(2) and (3) of this section are met, section 152(e) and this section apply, and E, not Grandmother, may claim Child as a dependent.

Example 6. F and G are the divorced parents of Child. In May of 2009, Child turns age 18 and is emancipated under the law of the state where Child resides. Therefore, in 2009 and later years, F and G do not have the right under state law to physical custody of Child for over one-half of the calendar year, and Child is not in the custody of F and G for over one-half of the calendar year. Section 152(e) and this section do not apply, and

whether Child is the qualifying child or qualifying relative of F or G is determined under section 152(c) or (d).

Example 7. (i) The facts are the same as in *Example 6,* except that Child turns age 18 and is emancipated under state law on August 1, 2009, resides with F from January 1, 2009, through May 31, 2009, and resides with G from June 1, 2009, through December 31, 2009. F executes a Form 8332 releasing F's right to claim Child as a dependent for 2009, which G attaches to G's 2009 return.

(ii) Under paragraph (c) of this section, Child is in the custody of F and G for over one-half of the calendar year.

(iii) Under paragraph (d)(1) of this section, Child is treated as not residing with either parent after Child's emancipation. Therefore, Child resides with F for 151 nights and with G for 61 nights. Because the requirements of paragraphs (b)(2) and (3) of this section are met, section 152(e) and this section apply, and G may claim Child as a dependent.

Example 8. H and J are the divorced parents of Child. Child generally resides with H during the week and with J every other weekend. Child resides with J in H's residence for 10 consecutive nights while H is hospitalized. Under paragraph (d)(1)(i) of this section, Child resides with H for the 10 nights.

Example 9. K and L, who are separated under a written separation agreement, are the parents of Child. In August 2009, K and Child spend 10 nights together in a hotel while on vacation. Under paragraph (d)(1)(ii) of this section, Child resides with K for the 10 nights that K and Child are on vacation.

Example 10. M and N are the divorced parents of Child. On December 31, 2009, Child attends a party at M's residence. After midnight on January 1, 2010, Child travels to N's residence, where Child sleeps. Under paragraph (d)(1) of this section, Child resides with N for the night of December 31, 2009, to January 1, 2010, because Child sleeps at N's residence that night. However, under paragraph (d)(2) of this section, the night of December 31, 2009, to January 1, 2010, is allocated to taxable year 2009 for purposes of determining whether Child resides with M or N for a greater number of nights in 2009.

Example 11. O and P, who never married, are the parents of Child. In 2009, Child spends alternate weeks residing with O and P. During a week that Child is residing with O, O gives Child permission to spend a night at the home of a friend. Under paragraph (d)(3)(i) of this section, the night Child spends at the friend's home is treated as a night that Child resides with O.

Example 12. The facts are the same as in *Example 11,* except that Child also resides at summer camp for 6 weeks. Because Child resides with each parent for alternate weeks, Child would have resided with O for 3 weeks and with P for 3 weeks of the period that Child is at camp. Under paragraph (d)(3)(i) of this section, Child is treated as residing with O for 3 weeks and with P for 3 weeks.

Example 13. The facts are the same as in *Example 12,* except that Child does not spend alternate weeks residing with O and P, and it cannot be determined whether Child would have resided with O or P for the period that Child is at camp. Under paragraph (d)(3)(ii) of this section, Child is treated as residing with neither parent for the 6 weeks.

Example 14. (i) Q and R are the divorced parents of Child. Q works from 11 PM to 7 AM Sunday through Thursday nights. Because of Q's nighttime work schedule, Child resides with R Sunday through Thursday nights and with Q Friday and Saturday nights. Therefore, in 2009, Child resides with R for 261 nights and with Q for 104 nights. Child spends all daytime hours when Child is not in school with Q and Q's address is registered with Child's school as Child's primary residence. Q executes a Form 8332 for 2009 releasing Q's right to claim Child as a dependent for that year, which R attaches to R's 2009 return.

(ii) Under paragraph (d) of this section, Q is the custodial parent of Child in 2009. Child resides with R for a greater number of nights than with Q due to Q's nighttime work schedule, and Child spends a greater number of days with Q. Therefore, paragraph (d)(5) of this section applies rather than paragraph (d)(1) of this section. Because the requirements of paragraphs (b)(2) and (3) of this section are met, R may claim Child as a dependent.

Example 15. (i) In 2009, S and T, the parents of Child, execute a written separation agreement. The agreement provides that Child will live with S and that T will make monthly child support payments to S. In 2009, Child resides with S for 335 nights and with T for 30 nights. S executes a letter declaring that S will not claim Child as a dependent in 2009 and in subsequent alternate years. The letter contains all the information requested on Form 8332, does not require the satisfaction of any condition such as T's payment of support, and has no purpose other than to serve as a written declaration under section 152(e) and this section. T attaches the letter to T's return for 2009 and 2011.

(ii) In 2010, T fails to provide support for Child, and S executes a Form 8332 revoking the release of S's right to claim Child as a dependent for 2011. S delivers a copy of the Form 8332 to T, attaches a copy of the Form 8332 to S's tax return for 2011, and keeps a copy of the Form 8332 and evidence of delivery of the written notice to T.

(iii) T may claim Child as a dependent for 2009 because S releases the right to claim Child as a dependent under paragraph (b)(3) of this section by executing the letter, which conforms to the requirements of paragraph (e)(1) of this section, and T attaches the letter to T's return in accordance with paragraph (e)(2) of this section. In 2010, S revokes the release of the claim in accordance with paragraph (e)(3) of this section, and the revocation takes effect in 2011, the taxable year that begins in the first calendar year after S provides written notice of the revocation to T. Therefore, in 2011, section 152(e) and this section do not apply, and whether Child is the qualifying child or qualifying relative of S or T is determined under section 152(c) or (d).

Example 16. The facts are the same as *Example 15,* except that the letter expressly states that S releases the right to claim Child as a dependent only if T is current in the payment of support for Child at the end of the calendar year. The letter does not qualify as a written declaration under paragraph (b)(3) of this section because S's agreement not to claim Child as a dependent is conditioned on T's payment of support and, under paragraph (e)(1)(i) of this section, a written declaration must be unconditional. Therefore, section 152(e) and this section do not apply, and whether Child is the qualifying child or qualifying relative of S or T for 2009 as well as 2011 is determined under section 152(c) or (d).

Example 17. (i) U and V are the divorced parents of Child. Child resides with U for more nights than with V in 2009 through 2011. In 2009, U provides a written statement to V declaring that U will not claim Child as a dependent, but the statement does not specify the year or years it is effective. V attaches the statement to V's returns for 2009 through 2011.

(ii) Because the written statement does not specify a year or years, under paragraph (e)(1) of this section, it is not a written declaration that conforms to the substance of Form 8332. Under paragraph (e)(4) of this section, the statement has no effect. Section 152(e) and this section do not apply, and whether Child is the qualifying child or qualifying relative of U or V is determined under section 152(c) or (d).

Example 18. (i) W and X are the divorced parents of Child. In 2009, Child resides solely with W. The divorce decree requires X to pay child support to W and requires W to execute a Form 8332 releasing W's right to claim Child as a dependent. W fails to sign a Form 8332 for 2009, and X attaches an unsigned Form 8332 to X's return for 2009.

(ii) The order in the divorce decree requiring W to execute a Form 8332 is ineffective to allocate the right to claim Child as a dependent to X. Furthermore, under paragraph (e)(1) of this section, the unsigned Form 8332 does not conform to the substance of Form 8332, and under paragraph (e)(4) of this section, the Form 8332 has no effect. Therefore, section 152(e) and this section do not apply, and whether Child is the qualifying child or qualifying relative of W or X is determined under section 152(c) or (d).

(iii) If, however, W executes a Form 8332 for 2009, and X attaches the Form 8332 to X's return, then X may claim Child as a dependent in 2009.

Example 19. (i) Y and Z are the divorced parents of Child. In 2003, Y and Z enter into a separation agreement, which is incorporated into a divorce decree, under which Y, the custodial parent, releases Y's right to claim Child as a dependent for all future years. The separation agreement satisfies the requirements for the form of a written declaration in effect at the time it is executed. Z attaches a copy of the separation agreement to Z's returns for 2003 through 2009.

(ii) Under paragraph (e)(1)(ii) of this section, a separation agreement may not serve as a written declaration. However, under paragraph (e)(5) of this section, a written declaration executed in a taxable year beginning on or before July 2, 2008, that satisfies the requirements for the form of a written declaration in effect at the time the

written declaration is executed, will be treated as meeting the requirements of paragraph (e)(1) of this section. Therefore, the separation agreement may serve as the written declaration required by paragraph (b)(3)(i) of this section for 2009, and Z may claim Child as a dependent in 2009 and later years.

Example 20. (i) The facts are the same as in *Example 19,* except that in 2009 Y executes a Form 8332 revoking the release of Y's right to claim Child as a dependent for 2010. Y complies with all the requirements of paragraph (e)(3) of this section.

(ii) Although Y executes the separation agreement releasing Y's right to claim Child as a dependent in a taxable year beginning on or before July 2, 2008, under paragraph (e)(5) of this section, Y's execution of the Form 8332 in 2009 is effective to revoke the release. Therefore, section 152(e) and this section do not apply in 2010, and whether Child is the qualifying child or qualifying relative of Y or Z is determined under section 152(c) or (d).

(h) *Effective/applicability date.* This section applies to taxable years beginning after July 2, 2008.

§ 1.152–4T [Removed]

■ **Par. 3.** Section 1.152–4T is removed.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: June 23, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–15044 Filed 7–1–08; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9409]

RIN 1545–BI01

Amendments to the Section 7216 Regulations—Disclosure or Use of Information by Preparers of Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that provide rules relating to the disclosure and use of tax return information by tax return preparers. These regulations provide updated guidance regarding the disclosure of a taxpayer's social security number to a tax return preparer located outside of the United States. The text of these regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on July 2, 2008.

Applicability Date: See § 301.7216–3T(d).

FOR FURTHER INFORMATION CONTACT: Lawrence E. Mack, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 301 to provide modified rules relating to the ability of a tax return preparer located within the United States to disclose a taxpayer's social security number constituting tax return information with the taxpayer's consent to a tax return preparer located outside of the United States. In the accompanying and cross-referenced notice of proposed rulemaking, the Treasury Department and IRS request comments on the proposed rule from all interested persons.

On December 8, 2005, the Treasury Department and IRS published a notice of proposed rulemaking (REG–137243–02) in the **Federal Register** (70 FR 72954) proposing amendments to the regulations under section 7216 (regarding the use or disclosure of tax return information by income tax return preparers). On January 3, 2008, the Treasury Department and IRS issued final regulations under section 7216 (TD 9375) applicable to disclosures or uses of tax return information occurring on or after January 1, 2009. Thus, TD 9375 replaces previously issued final regulations that remain applicable to disclosures or uses of tax return information occurring prior to January 1, 2009.

TD 9375 included the revision of § 301.7216–3(b)(4), which, for disclosures and uses of tax return information occurring on or after January 1, 2009, provides that an income tax return preparer located in the United States may not disclose the taxpayer's social security number (SSN) to a tax return preparer located outside of the United States even if the taxpayer consents to the disclosure. These temporary regulations modify the rules under § 301.7216–3(b)(4).

Explanation of Provisions

The Treasury Department and IRS are amending the regulations under section 7216 applicable to disclosures and uses of tax return information occurring on or after January 1, 2009, to provide a limited exception to the general rule that an income tax return preparer located in the United States may not disclose a taxpayer's SSN to a tax return preparer located outside of the United States. Section 301.7216–3(b)(4) provides that a tax return preparer located within the United States, including any territory or possession of the United States, may not obtain consent to disclose a taxpayer's SSN to a tax return preparer located outside of the United States or any territory or possession of the United States. Thus, with one exception, if a tax return preparer located within the United States obtains consent from a taxpayer to disclose tax return information to another tax return preparer located outside of the United States, as provided under §§ 301.7216–3(a)(3)(i)(D), 301.7216–2(c)(2) and 301.7216–2(d), the tax return preparer located in the United States may not disclose the taxpayer's SSN, and must redact or otherwise mask the taxpayer's SSN before the tax return information is disclosed outside of the United States. The exception is limited to the circumstance in which a tax return preparer located inside the United States initially receives the SSN from a tax return preparer located outside the United States and the preparer within the United States retransmits the SSN to the preparer that provided the SSN. When a taxpayer-client requests that a tax return preparer within the United States transfer the return preparation engagement to a tax return preparer located outside the United States, the preparer still must redact or otherwise mask the taxpayer's SSN before the information is disclosed and, in this situation, it will be incumbent upon the taxpayer to provide the SSN directly to the tax return preparer located abroad.

The revisions containing the SSN disclosure prohibition in § 301.7216–3(b)(4) were explained in the preamble to the final regulations. The regulation was adopted in light of factors including: (1) The fact that it is not necessary for tax return preparers to disclose certain taxpayer identifying information to other tax return preparers who are assisting them in preparing a return; (2) the important role an SSN plays in the tax administration process, and the heightened potential for misuse when an SSN is readily associated with confidential information, such as tax return information; and 3) the heightened concern about the theft of taxpayer identifying information resulting from disclosures outside the United States.

Upon further consideration, the Treasury Department and IRS have concluded that § 301.7216–3(b)(4) can

be amended to provide flexibility to allow a tax return preparer within the United States to disclose an SSN with the taxpayer's consent to a tax return preparer located outside of the United States if both tax return preparers have sufficient data security programs and procedures in operation to protect such important confidential information from misuse or unauthorized access or disclosure. These measures will significantly reduce the security risks associated with the disclosure of this information outside of the United States. Although SSN security is the primary focus of these regulations, the flexibility provided by these regulations will enable qualified tax return preparers to address situations in which there is a need for a tax return preparer in the United States to disclose an SSN to a tax return preparer located outside of the United States, as appropriate under the circumstances. This includes, but is not limited to, situations in which the tax return preparer located outside of the United States is a signing tax return preparer or requires an unredacted SSN to file a return on behalf of a taxpayer, the tax return preparer located outside the United States may need a copy of the entire return, including the taxpayer's SSN (for example, to assist an expatriated U.S. taxpayer secure treaty benefits from the relevant foreign government), or the taxpayer prefers that the tax return preparer located within the United States disclose the taxpayer's SSN to the tax return preparer located outside the United States (for example, because the taxpayer concludes that the data security protection provided by the tax return preparer in the United States and the tax return preparer located outside of the United States is sound).

In light of these considerations, the Treasury Department and IRS, pursuant to these temporary regulations, amend the regulations contained in TD 9375 (applicable to disclosures and uses of tax return information on or after January 1, 2009) to include an exception to § 301.7216–3(b)(4). The exception in § 301.7216–3T(b)(4)(ii) provides that a tax return preparer located within the United States, including any territory or possession of the United States, may obtain consent to disclose the taxpayer's SSN to a tax return preparer located outside of the United States or any territory or possession of the United States if the tax return preparer discloses the SSN through the use of an ''adequate data protection safeguard'' as described in guidance published in the Internal Revenue Bulletin and verifies the maintenance of the adequate data protection safeguards in the request for the taxpayer's consent pursuant to the specifications described in guidance published in the Internal Revenue Bulletin. The exception authorizes only those preparers with an adequate data protection safeguard in operation to request a taxpayer's consent to disclose an SSN to a preparer located outside the United States that also has an adequate data protection safeguard. The Treasury Department and IRS anticipate that requiring tax return preparers that seek a taxpayer's consent to disclose an SSN to a tax return preparer located abroad to maintain adequate data security would provide the further benefit of enhancing the level of security of any data transfer, including the data transfer of the taxpayer's SSN, while providing additional flexibility to address situations in which there is a reason or need to disclose an SSN to a tax return preparer located abroad. Tax return preparers without an adequate data protection safeguard, or those preparers with an adequate data protection safeguard that seek to disclose an SSN to a tax return preparer located abroad that does not have an adequate data protection safeguard, must continue to comply with the general rule in § 301.7216–3T(b)(4)(i), and are still required to mask any SSN prior to disclosure to a tax return preparer located outside the United States, or any territory or possession of the United States, even if the taxpayer has consented to disclosure of an SSN.

Revenue Procedure 2008–35, published concurrently with these regulations, provides the relevant guidance regarding the exception in § 301.7216–3T(b)(4)(ii) to the general rule requiring SSN masking. Section 4.07 of Revenue Procedure 2008–35 provides guidance regarding the requirements for an adequate data protection safeguard. Pursuant to Section 4.07, an ''adequate data protection safeguard'' is a data security program, policy and practice that meets or conforms to one of the following privacy or data security frameworks:

(1) The United States Department of Commerce ''safe harbor'' framework for data protection (or successor program);

(2) A foreign law data protection safeguard that includes a security component, for example, the European Commission's Directive on Data Protection;

(3) A framework that complies with the requirements of a financial or similar industry-specific standard that is generally accepted as best practices for technology and security related to that industry, for example, the BITS (Financial Services Roundtable) Financial Institution Shared Assessment Program;

(4) The requirements of the AICPA/CICA Privacy Framework;

(5) The requirements of the most recent version of IRS Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies and Entities; or

(6) Any other data security framework that provides the same level of privacy protection as contemplated by one or more of the frameworks described in (1) through (5).

Section 4.04(1)(e)(ii) of Revenue Procedure 2008–35 provides guidance regarding mandatory language that must be included in each request for consent provided to an individual taxpayer by the tax return preparer that seeks consent to disclose an SSN to a return preparer located outside the United States or its or territories or possessions. See § 601.601(d)(2)(ii)(b).

These regulations clarify that the rule in § 301.7216–3T(b)(4) applies only to a tax return preparer's request for consent to disclose tax return information, including an SSN, from a taxpayer filing a return in the Form 1040 series, for example, Form 1040, Form 1040NR, Form 1040A, or Form 1040EZ. Also, the regulations clarify that a tax return preparer located outside of the United States does not include a tax return preparer who is continuously and regularly employed in the United States or any territory or possession of the United States and who is in a temporary travel status outside of the United States. This clarification is necessary to avoid disruption of the performance of the duties of employees of tax return preparers based in the United States who are on a temporary travel assignment in a location outside of the United States.

The Treasury Department and IRS also conclude that the addition of the exception in § 301.7216–3T(b)(4)(ii) appropriately balances concerns regarding safeguarding of sensitive tax return information and identity theft against the tax return preparers' needs for disclosing SSNs and a taxpayer's right to control access to his or her SSN. In a separate notice of proposed rulemaking published with these temporary regulations, the Treasury Department and IRS request comments on the proposed rules, as well as the guidance regarding the requirements for an adequate data protection safeguard in Section 4.07 of Revenue Procedure 2008–35.

Special Analyses

It has been determined that this Treasury decision is not a significant

regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations because they are interpretive regulations. Because these regulations are necessary to provide tax return preparers and taxpayers with immediate guidance on the application of the section 7216 rules regarding SSN masking requirements, particularly in light of the January 1, 2009 applicability date provided by the recently promulgated section 7216 regulations contained in TD 9375, and as these regulations are intended to provide a limited exception to, and relief from, the rule requiring SSN masking in all instances where tax return information is disclosed to a tax return preparer located outside of the United States and its territories and possessions, good cause would otherwise exist for dispensing with notice and public comment pursuant to 5 U.S.C. 553(b) and (c). For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Lawrence E. Mack, Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 301.7216–3T also issued under 26 U.S.C. 7216. * * *

■ **Par. 2.** Section 301.7216–3 is amended by revising paragraph (b)(4) to read as follows:

§ 301.7216–3 Disclosure or use permitted only with the taxpayer's consent.

* * * * *

(b) * * *

(4) [Reserved]. For further guidance, see § 301.7216–3T(b)(4).

* * * * *

■ **Par. 3.** Section 301.7216–3T is added to read as follows:

§ 301.7216–3T Disclosure or use permitted only with the taxpayer's consent (temporary).

(a) [Reserved]. For further guidance, see § 301.7216–3(a).

(b) *Timing requirements and limitations*—(1) through (3) [Reserved]. For further guidance, see § 301.7216–3(b)(1) through (3).

(4) *No consent to the disclosure of a taxpayer's social security number to a return preparer outside of the United States with respect to a taxpayers filing a return in the Form 1040 Series*—(i) *In general.* Except as provided in paragraph (ii) of this section, a tax return preparer located within the United States, including any territory or possession of the United States, may not obtain consent to disclose the taxpayer's social security number (SSN) with respect to taxpayers filing a return in the Form 1040 Series, for example, Form 1040, Form 1040NR, Form 1040A, or Form 1040EZ, to a tax return preparer located outside of the United States or any territory or possession of the United States. Thus, if a tax return preparer located within the United States (including any territory or possession of the United States) obtains consent from an individual taxpayer to disclose tax return information to another tax return preparer located outside of the United States, as provided under §§ 301.7216–2(c) and 301.7216–2(d), the tax return preparer located in the United States may not disclose the taxpayer's SSN, and the tax return preparer must redact or otherwise mask the taxpayer's SSN before the tax return information is disclosed outside of the United States. If a tax return preparer located within the United States initially receives or obtains a taxpayer's SSN from another tax return preparer located outside of the United States, however, the tax return preparer within the United States may, without consent, retransmit the taxpayer's SSN to the tax return preparer located outside the United States that initially provided the SSN to the tax return preparer located within the United States. For purposes of this section, a tax return preparer located outside of the United States does not include a tax return preparer who is continuously and regularly employed in the United States or any territory or possession of the United States and who is in a temporary travel status outside of the United States.

(ii) *Exception.* A tax return preparer located within the United States, including any territory or possession of the United States, may obtain consent to disclose the taxpayer's SSN to a tax return preparer located outside of the United States or any territory or possession of the United States where the tax return preparer within the United States discloses the SSN to a tax return preparer outside of the United States through the use of an adequate data protection safeguard as defined by the Secretary in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter) and verifies the maintenance of the adequate data protection safeguards in the request for the taxpayer's consent pursuant to the specifications described by the Secretary in guidance published in the Internal Revenue Bulletin.

(b)(5) and (c) [Reserved]. For further guidance, see § 301.7216–3(b)(5) and (c).

(d) *Effective/applicability date.* This section applies to disclosures or uses of tax return information occurring on or after January 1, 2009. The applicability of this section expires on or before January 1, 2012.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: June 25, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–15046 Filed 7–1–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0207]

RIN 1625–AA09

Drawbridge Operation Regulations; Potomac River, Oxon Hill, MD and Alexandria, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is temporarily changing the regulations governing the operation of the new

Woodrow Wilson Memorial (I–95) Bridge, mile 103.8, across Potomac River between Alexandria, Virginia and Oxon Hill, Maryland. This action is necessary to finalize construction of the drawbridge.

DATES: This temporary rule is effective from July 2, 2008 to March 1, 2009.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0207 and are available online at *http://www.regulations.gov*. This material is also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 18, 2008, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Potomac River, Oxon Hill, MD and Alexandria, VA'' in the **Federal Register** (73 FR 21090). We received two e-mails commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. While construction continues, this rule will allow the drawbridge to remain closed-to-navigation each day from 10 a.m. to 2 p.m. until and including March 1, 2009.

Background and Purpose

On March 5, 2008, we published a notice of temporary deviation from the regulations entitled ''Drawbridge Operation Regulations; Potomac River, Between Maryland and Virginia'' in the **Federal Register** (73 FR 13127), which ended on May 30, 2008.

The Maryland State Highway Administration and the Virginia Department of Transportation, co-owners of the drawbridge, requested an extension of the aforementioned temporary deviation for a longer period of time in an effort to minimize the potential for major regional traffic impacts and consequences during bridge openings while construction continues. Bridge owners requested that the drawbridge not be available for openings for vessels each day between the hours of 10 a.m. to 2 p.m. through Sunday, March 1, 2009 or until the bridge is properly commissioned, whichever comes first. Construction will continue during this time period and the normal vehicular traffic pattern with five lanes operating in each direction is not anticipated until near the end of the time period.

From a river-user standpoint, the coordinators for the construction of the new Woodrow Wilson Bridge Project have received no requests from boaters or mariners to open during the 10 a.m. to 2 p.m. timeframe since the first temporary deviation was issued in late June 2006. In fact, no requests have been received for an opening of the new bridge at all since July 3, 2006. Finally, the coordinators have received no complaints on the 10 a.m. to 2 p.m. restriction. This temporary rule will affect only vessels with mast heights of 75 feet or greater. Furthermore, all operators of affected vessels with mast heights greater than 75 feet will be able to request an opening of the drawbridge in the ''off-peak'' vehicle traffic hours (evening and overnight) in accordance with 33 CFR 117.255(a).

Discussion of Comments and Changes

The Coast Guard received two comments by e-mail to the NPRM. One respondent stated that this temporary change of the regulation will have minimal effect on their Potomac River operation and the delivery of the jet fuel barge can be scheduled around the daily planned closure.

The other respondent indicated that their tugs did not need to open the drawbridge; the vertical clearance is sufficient and did not foresee any issues as long as they can still use the channel.

Based on the comments received, we are issuing a temporary rule without substantive change from the NPRM.

Discussion of Rule

The Coast Guard is temporarily amending 33 CFR § 117.255 by inserting new paragraphs (a)(2)(iii) and (a)(4)(iv), which allow the draw of the Woodrow Wilson Memorial (I–95) Bridge, at mile 103.8, between Alexandria, Virginia and Oxon Hill, Maryland to remain closed between 10 a.m. and 2 p.m. through March 1, 2009.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We reached this conclusion based on the fact that this temporary change will have only a minimal impact on maritime traffic transiting the bridge. All operators of affected vessels with mast heights greater than 75 feet will be able to request an opening of the drawbridge in the ''off-peak'' vehicle traffic hours (evening and overnight) in accordance with 33 CFR 117.255(a), and mariners can plan their trips in accordance with the scheduled bridge openings to minimize delays.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation, all operators of affected vessels with mast heights greater than 75 feet will be able to request an opening of the drawbridge in the ''off-peak'' vehicle traffic hours (evening and overnight) in accordance with 33 CFR 117.255(a), and mariners who plan their transits in accordance with the scheduled bridge openings can minimize delay.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. From July 2, 2008 to March 1, 2009, in § 117.255 add new paragraphs (a)(2)(iii) and (a)(4)(iv) to read as follows:

§ 117.255 Potomac River.

(a) * * *

(2) * * *

(iii) From July 2, 2008 to March 1, 2009, from 10 a.m. to 2 p.m., the draw need not be opened.

* * * * *

(4) * * *

(iv) From July 2, 2008 to March 1, 2009, from 10 a.m. to 2 p.m., the draw need not be opened.

* * * * *

Dated: June 19, 2008.

Fred M. Rosa, Jr.,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E8–14954 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0592]

Drawbridge Operation Regulations; Thames River, New London, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Amtrak Bridge, mile 3.0, across the Thames River at New London, Connecticut. While this temporary deviation is in effect, the bridge may remain in the closed position for three days and operate on a temporary operating schedule for nine days.

DATES: This deviation is effective from June 28, 2008 through July 9, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0592 and are available online at *http://www.regulations.gov.* They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Amtrak Bridge, across the Thames River at mile 3.0, at New London, Connecticut, has a vertical clearance in the closed position of 30 feet at mean high water and 33 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.224.

The waterway has seasonal recreational vessels, fishing vessels, and U.S. Navy vessels of various sizes. The U.S. Navy and other marine facilities were notified regarding this deviation and no objections were received.

The owner of the bridge, National Railroad Passenger Corporation (Amtrak), requested a temporary deviation to facilitate rehabilitation construction at the bridge.

Under this temporary deviation the Amtrak Bridge, mile 3.0, across the Thames River at New London may remain in the closed position from June 28, 2008 through June 30, 2008.

From July 1, 2008, through July 9, 2008, the draw may remain in the closed position; except that, the draw shall open for the passage of vessel traffic during the following time periods:

Monday through Thursday from: 5 a.m. to 5:40 a.m.; 11:20 a.m. to 11:55 a.m.; 3:35 p.m. to 4:15 p.m.; and 8:30 p.m. to 8:55 p.m.

Friday and Saturday from: 8:30 a.m. to 9:10 a.m.; 12:35 p.m. to 1:05 p.m.; 3:40 p.m. to 4:10 p.m.; 5:35 p.m. to 6:05 p.m.; and 7:35 p.m. to 8:40 p.m.

Sunday from: 8:30 a.m. to 9:20 a.m.; 11:35 a.m. to 12:15 p.m.; 1:30 p.m. to 1:55 p.m.; 6:30 p.m. to 7:10 p.m.; and 8:30 p.m. to 9:15 p.m.

The draw shall open on signal at any time for U.S. Navy submarines and their associated escort vessels.

Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 25, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8–15026 Filed 7–1–08; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0559]

RIN 1625–AA08

Bellingham Bay, Bellingham, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Bellingham Bay, Bellingham, WA Safety Zone in Bellingham Bay from 9:30 p.m. to 11 p.m. on July 4th, 2008. This action is necessary to ensure the safety of participants and spectators during the Bellingham Bay, Bellingham, WA (Haggens 4th of July Blast). During the enforcement period, entry into the Safety Zone is prohibited unless authorized by the Captain of the Port, Puget Sound, Seattle, WA.

DATES: The regulations in 33 CFR 165.1304 will be enforced from 9:30 p.m. to 11 p.m. on July 4th, 2008.

FOR FURTHER INFORMATION CONTACT: Ensign Heidi Bevis, c/o Captain of the Port Puget Sound, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA 98134 at (206) 217–6002.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the Bellingham Bay, Bellingham, WA Fireworks Show, 33 CFR 165.1304 on July 4th, 2008 from 9:30 p.m. to 11 p.m.

This safety zone provides for a regulated area to protect spectators. Movements are regulated for all vessels in the area as described under 33 CFR 165.1306 or unless otherwise regulated by the COTP or his designee. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this safety zone.

Under the provisions of 33 CFR 165.1304, all waters of Bellingham Bay, Washington, bounded by a circle with a radius of 1,000 yards centered on the fireworks launching site located on the Georgia Pacific Lagoon Seawall at position latitude 48°44′56″ N, longitude 122°29′40″ W, including the entrances to the I & J Street Waterway and the Whatcom Creek Waterway.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.1304(c) and 5 U.S.C. 552(a).

Dated: June 18, 2008.

Stephen P. Metruck,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. E8–15029 Filed 7–1–08; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0561]

RIN 1625–AA08

Lake Union, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Lake Union, Seattle, WA Safety

Zone in Lake Union from 9:30 p.m. to 11 p.m. on July 4th, 2008. This action is necessary to ensure the safety of participants and spectators during the Lake Union, Seattle, WA (Ivar's Fireworks Show). During the enforcement period, entry into the Safety Zone is prohibited unless authorized by the Captain of the Port, Puget Sound, Seattle, WA. The Captain of the Port may establish transit lanes along the east and west shorelines of Lake Union and may allow boaters to transit north and south through the safety zone in these lanes. If established, these transit lanes will remain open until 10 p.m. and then be closed until the end of the fireworks display.

DATES: The regulations in 33 CFR 165.1306 will be enforced from 9:30 p.m. to 11 p.m. on July 4th, 2008.

FOR FURTHER INFORMATION CONTACT: Ensign Heidi Bevis, c/o Captain of the Port Puget Sound, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA 98134 at (206) 217–6002.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the Lake Union, Seattle, WA Fireworks Show, 33 CFR 165.1306 on July 4th, 2008, from 9:30 p.m. to 11 p.m.

This safety zone provides for a regulated area to protect spectators. Movements are regulated for all vessels in the area as described under 33 CFR § 165.1306 or unless otherwise regulated by the COTP or his designee. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this safety zone.

Under the provisions of 33 CFR 165.1306, all portions of the waters of Lake Union bounded by the following coordinates: Latitude 47°38′32″ N, Longitude 122°20′34″ W; thence to Latitude 47°38′32″ N, Longitude 122°19′48″ W; thence to Latitude 47°38′10″ N, Longitude 122°20′24″ W; thence returning to the origin. This safety zone begins 1,000 feet south of Gas Works Park and encompasses all waters from east to west for 2,500 feet. Floating markers will be placed by the sponsor of the fireworks demonstration to delineate the boundaries of the safety zone.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.1306(c) and 5 U.S.C. 552(a).

Dated: June 18, 2008.

Stephen P. Metruck,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. E8–15032 Filed 7–1–08; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0560]

RIN 1625–AA08

Elliot Bay, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the annual Elliot Bay Seattle, WA safety zone in Elliot Bay from 9:30 p.m. to 11 p.m. on July 4th, 2008. This action is necessary to ensure the safety of participants and spectators during the Ivar's Spectacular Fireworks show. During the enforcement period, entry into, transit through, mooring, or anchoring within this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

DATES: The regulations in 33 CFR 165.1307 will be enforced from 9:30 p.m. to 11 p.m. on July 4th, 2008.

FOR FURTHER INFORMATION CONTACT: Ensign Heidi Bevis, c/o Captain of the Port Puget Sound, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA 98134 at (206) 217–6002.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for Elliot Bay, Seattle, WA Fireworks Show, 33 CFR 165.1307 from 9:30 p.m. to 11 p.m. on July 4th, 2008.

This safety zone provides for a regulated area to protect spectators while providing unobstructed vessel traffic lanes to ensure timely arrival of emergency response craft. Movements are regulated for all vessels in the area as described under 33 CFR 165.1307 or unless otherwise regulated by the COTP or his designee. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this safety zone.

Under the provisions of 33 CFR 165.1307, all waters of Elliott Bay within a box bounded by the points: 47°37′22″ N, 122°22′06″; 47°37′06″ N, 122°21′45″; 47°36′54″ N, 122°22′05″; 47°37′08″ N, 122°22′27″; thence returning to the origin. The safety zone resembles a square centered around the barge from which the fireworks will be launched and begins 100 yards off the shore of Myrtle Edwards Park. Floating markers will be placed by the sponsor of the fireworks display to delineate the boundaries of the safety zone.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.1307(c) and 5 U.S.C. 552 (a).

Dated: June 18, 2008.

Stephen P. Metruck,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. E8–15038 Filed 7–1–08; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0470]

RIN 1625–AA11

Regulated Navigation Area and Safety Zone, Chicago Sanitary and Ship Canal, Romeoville, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area and safety zone on the Chicago Sanitary and Ship Canal near Romeoville, IL. This regulated navigation area and safety zone places navigational and operational restrictions on all vessels transiting through the electrical dispersal barrier IIA.

DATES: Amendments for §§ 165.923 and 165.T09–0470 are effective from June 30, 2008, until August 15, 2008; and the amendment for § 165.T09–4001 is effective from 7 a.m., July 14, 2008, until 5 p.m., August 9, 2008.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0470 and are available online at *www.regulations.gov.* The material is also available for inspection and copying at two places: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Ninth

Coast Guard District, Room 2069, 1240 East 9th Street, Cleveland, Ohio 44199, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule call CDR Tim Cummins, Deputy Prevention Division, Ninth Coast Guard District, telephone 216–902–6045. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: On June 12, 2008, we published a notice of proposed rulemaking (NPRM) entitled Regulated Navigation Area and Safety Zone, Chicago Sanitary and Ship Canal, Romeoville, IL, in the **Federal Register** (73 FR 33337). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of persons and vessels, and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

The electrodes on the demonstration electrical dispersal barrier I located between mile markers 296.1 and 296.7 of the Chicago Sanitary and Ship Canal are beginning to fail. This barrier was constructed to prevent Asian Carp from entering Lake Michigan through the Illinois River system by generating a low-voltage electric field across the canal. The Army Corps of Engineers intends to shutdown barrier I and begin the process of replacing the barrier electrodes which run across the bottom of the canal. Divers will be in the water and a barge-mounted crane will be operating during maintenance operations to barrier I. Electrical dispersal barrier IIA located on the Chicago Sanitary and Ship Canal 270 feet south of mile marker 296.1 to mile marker 296.7 will be in operation while repairs are being made to demonstration electrical dispersal barrier I. Barrier IIA will operate continuously for a two week period before taking barrier I off line for electrode replacement. Electrical dispersal barrier IIA generates a more powerful electric field than barrier I over a larger area within the Chicago Sanitary and Ship Canal.

The Coast Guard and U.S. Army Corps of Engineers conducted field tests to ensure the continued safe navigation of commercial and recreational traffic across the barrier; however, results indicated an arcing risk and hazardous electrical discharges as vessels transited the barrier posing a serious risk to navigation through the barrier. To mitigate these risks, navigational and operational restrictions will be placed on all vessels transiting through the vicinity. Until the potential electrical hazards can be rectified, the Coast Guard will require vessels transiting the regulated navigation area to adhere to specified operational and navigational requirements.

Discussion of Comment and Changes

No comments were received and no changes were made.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the fact that traffic will still be able to transit through the regulated navigation area and the minimal time that vessels will be restricted from the safety zone. The safety zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small: the owners and operators of vessels intending to transit or anchor in a portion of the Chicago Sanitary Ship Canal from June 30, 2008 to August 15, 2008.

This regulated navigation area and safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic will be able to transit through the regulated navigation area. The U.S. Army Corps of Engineers will contract bow boat assistance for barge tows containing one or more Red Flag barges. Vessel traffic will only be limited for one five hour period and one four hour period each day the safety zone is in effect. In the event this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Lake Michigan to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has substantial direct effect on State or local governments and would either preempt State law or

impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this proposed rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

We have analyzed this rule under Executive order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedure; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded, under the Instruction, that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This temporary rule establishes a regulated navigation area and safety zone and as such is covered by this paragraph.

A final environmental analysis checklist and a final categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.923 [Suspended]

■ 2. Section 165.923 is suspended from June 30, 2008 until August 15, 2008.

■ 3. A new temporary § 165.T09–0470 is added to read as follows:

§ 165.T09–0470 Temporary Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL.

(a) *Regulated Navigation Area.* The following is a Regulated Navigation Area: All waters of the Chicago Sanitary and Ship Canal, Romeoville, IL, 270 feet south of the Romeo Road Bridge Mile Marker 296.1 to the south side of the Aerial Pipeline Mile Marker 296.7.

(b) *Effective period.* This section is effective from June 30, 2008 until August 15, 2008.

(c) *Definitions.* The following definitions apply to this section:

Designated representative means the Captain of the Port Lake Michigan.

Red Flag barges means barges containing hazardous materials as identified by the following commodity codes:

(i) 01 (Empty with previous hazardous material);

(ii) 20 (Petroleum and Petroleum Products);

(iii) 21 (Crude Petroleum);

(iv) 22 (Gasoline, Jet Fuel and Kerosene);

(v) 23 (Distillate, Residual and other Fuel Oils; Lubricating Oils and Greases);

(vi) 24 (Petroleum Pitches, Coke Asphalt, Naphtha and Solvents);

(vii) 30 (Chemicals and Related Products);

(viii) 31 (Fertilizer-Nitrogenous, Potassic, Phosphatic and Others); and

(ix) 32 (Organic Industrial Chemicals (Crude Products) from Coal, Tar, Petroleum and Natural Gas, Dyes,

Organic Pigment Dying and Tanning Materials, Alcohols, Benzene; Inorganic Industrial Chemicals (Sodium Hydroxide); Radioactive and Associated Materials; Drugs)).

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.13 apply.

(2) All up-bound and down-bound barge tows that contain one or more red flag barges transiting through the regulated navigation area must be assisted by a bow boat until the entire tow is clear of the expanded regulated navigation area boundaries.

(i) Information on how to contact the contractor for bow boat assistance will be provided to the public in a Broadcast Notice to Mariners.

(ii) Towing assistance will be provided from at least one mile above the regulated navigation area to as least one mile below the regulated navigation area.

(3) All vessels are prohibited from loitering in the regulated navigation area.

(4) Vessels may enter the regulated navigation area for the sole purpose of transiting to the other side and must maintain headway throughout the transit.

(5) All personnel on open decks must wear a Coast Guard approved Type I personal flotation device while in the regulated navigation area.

(6) Vessels may not moor or lay up on the right or left descending banks of the regulated navigation area.

(7) Towboats may not make or break tows in the regulated navigation area.

(8) Vessels may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the barrier to announce intentions and work out passing arrangements on either side.

(9) Commercial tows transiting the regulated navigation area must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

(e) *Compliance.* All persons and vessels must comply with this section and any additional instructions of the Ninth Coast Guard District Commander, or his designated representative.

■ 4. A new temporary § 165.T09–4001 is added to read as follows:

§ 165.T09–4001 Safety Zone; Chicago Sanitary and Ship Canal, Romeoville, IL.

(a) *Safety Zone.* The following area is a temporary safety zone: All waters of the Chicago Sanitary and Ship Canal from mile marker 296.1 to 296.7.

(b) *Effective period.* This regulation is effective from 7 a.m., July 14, 2008 to 5 p.m., August 9, 2008. The safety zone will be enforced from 7 a.m. to 12 p.m. and 1 p.m. to 5 p.m. on July 14, 2008 through August 9, 2008.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan, or his on-scene representative, for paragraph (a) of this section.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan, or his on-scene representative, for paragraph (a) of this section.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf for paragraph (a) of this section. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or his on-scene representative.

Dated: June 24, 2008.

David R. Callahan,

Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. E8–14993 Filed 7–1–08; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0511]

RIN 1625–AA00

Safety Zone; Red, White, and Blue Fireworks, Incline Village, NV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of Lake Tahoe for the loading, transport, and launching of fireworks to celebrate Independence Day. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or his designated representative.

DATES: This rule is effective from 8 a.m. on June 28, 2008, through 10:30 p.m. on July 4, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0511 and are available online at *http://www.regulations.gov*. They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and Coast Guard Sector San Francisco, 1 Yerba Buena Island, San Francisco, California, 94130, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Lieutenant Junior Grade Sheral Richardson, U.S. Coast Guard Sector San Francisco, at (415) 399–7436. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process was complete. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public

interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in the fireworks display.

Background and Purpose

The Red, White, and Blue Tahoe organization will sponsor a fireworks display on July 4, 2008, in the waters of Lake Tahoe. The fireworks display is meant for entertainment purposes to celebrate Independence Day. This safety zone is issued to establish a temporary restricted area in Lake Tahoe around the fireworks launch barge during loading of the pyrotechnics, during the transit of the barge to the display location, and during the fireworks display. This restricted area around the launch barge is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barge. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone in the navigable waters of the Lake Tahoe. During the loading of the fireworks barge, while the barge is being towed to the display location, and until the start of the fireworks display, the temporary safety zone applies to the navigable waters around and under the fireworks barge within a radius of 100 feet. From 9 p.m. until 10:30 p.m. on July 4, 2008, the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around and under the fireworks barge within a radius of 1,000 feet.

Loading of the pyrotechnics onto the fireworks barges is scheduled to commence at 8 a.m. on June 28, 2008, and will take place at Obexer Marina in Homewood, CA. Towing of the barges from Obexer Marina to the display location is scheduled to take place between 7:30 a.m. and 3 p.m. on July 3, 2008. From 3 p.m. on July 3, 2008, until the conclusion of the fireworks show, at 10:30 p.m. on July 4, 2008, the barges will be anchored approximately 700–800 feet off the shoreline of Incline Village in position 39°14′16″ N, 119°53′59″ W (NAD 83). The fireworks show is scheduled to commence between the hours of 9 p.m. and 10 p.m. on July 4, 2008. The fireworks display is scheduled to last approximately thirty minutes.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the fireworks barge while the fireworks are loaded, during the transit of the fireworks barge, and until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels a safe distance away from the fireworks barge to ensure the safety of participants, spectators, and transiting vessels.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the affected portion of Lake Tahoe to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such

an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded, under the instruction, that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation.

A final environmental analysis checklist and a final categorical exclusion determination will be available in the docket under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165–T11–049 to read as follows:

§ 165–T11–049 Safety Zone; Red, White, and Blue Fireworks, Incline Village, NV.

(a) *Location.* This temporary safety zone is established for the waters of Lake Tahoe.

(1) Loading of the pyrotechnics onto the fireworks barges will take place at Obexer Marina in Homewood, CA.

(2) Towing of the barges from Obexer Marina to the display location.

(3) The position the barges will be anchored in, and the launch site, is approximately 700–800 feet off the shoreline of Incline Village in position 39°14′16″ N, 119°53′59″ W (NAD 83).

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF–16 or the 24-hour Command Center via telephone at (415) 399–3547.

(d) *Effective period.* This section is effective from 8 a.m. on June 28, 2008, through 10:30 p.m. on July 4, 2008.

Dated: June 24, 2008.

D.J. Swatland,

Captain, U.S. Coast Guard, Acting Captain of the Port, San Francisco.

[FR Doc. E8–14956 Filed 7–1–08; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0504]

RIN 1625–AA00

Safety Zone; Peninsula Celebration Association Annual Fireworks Spectacular, Redwood City, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the

navigable waters of Redwood Creek for the loading, transport, and launching of fireworks used during the Peninsula Celebration Association Annual Fireworks Spectacular Display to be held on July 4, 2008. This safety zone is intended to prohibit vessels and people from entering into or remaining within the regulated areas in order to ensure the safety of participants and spectators.

DATES: This rule is effective from 9 a.m. through 10 p.m. on July 4, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0504 and are available online at *http://www.regulations.gov.* They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and Coast Guard Sector San Francisco, 1 Yerba Buena Island, San Francisco, California 94130, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Lieutenant Junior Grade Sheral Richardson, U.S. Coast Guard Sector San Francisco, at (415) 399–7436. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process was complete. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in the fireworks display.

Background and Purpose

Peninsula Celebration Association will sponsor a fireworks display on July 4, 2008 in the waters of Redwood Creek near the Port of Redwood City. The fireworks display is meant for entertainment purposes. This safety zone is issued to establish a temporary restricted area in Redwood Creek around the fireworks launch barge during loading of the pyrotechnics, during the transit of the barge to the display location, and during the fireworks display. This restricted area around the launch barge is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barge. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone in the navigable waters of Redwood Creek near Pier 50 and in Redwood Creek. During the loading of the fireworks barge, while the barge is being towed to the display location, and until the start of the fireworks display, the temporary safety zone applies to the navigable waters around and under the fireworks barge within a radius of 100 feet. Fifteen minutes prior to and during the fifteen minute fireworks display, the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around and under the fireworks barge within a radius of 1,000 feet. Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 9 a.m. on July 4, 2008, and will take place at Pier 50 in San Francisco. Towing of the barge from Pier 50 to the display location is scheduled to take place between 12 p.m. and 8 p.m. on July 4, 2008. During the fireworks display, scheduled to commence at approximately 9:30 p.m., the fireworks barge will be located approximately 600 feet off Wharf #5 in the Port of Redwood City in approximate position 37°30.35′ N, 122°12.85′ W (NAD 83).

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of Redwood Creek to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in

understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded, under the Instruction, that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation.

A final environmental analysis checklist and a final categorical exclusion determination will be available in the docket under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–054 to read as follows:

§ 165.T11–054 Safety Zone; Peninsula Celebration Association Annual Fireworks Spectacular, Redwood City, CA.

(a) *Location.* This temporary safety zone is established for the waters of Redwood Creek surrounding a barge used as a launch platform for a fireworks display.

(1) Loading of pyrotechnics onto the fireworks barge will take place at Pier 50 in San Francisco, CA.

(2) Towing of the barge from Pier 50 to the display location is scheduled to take place between 12:01 p.m. and 8 p.m. on July 4, 2008.

(3) The fireworks barge will be located approximately 600 feet off Wharf #5 in the Port of Redwood City in approximate position 37°30.35′N, 122°12.85′ W (NAD 83).

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer

designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF–16 or the 24-hour Command Center via telephone at (415) 399–3547.

(d) This rule is effective from 9 a.m. through 10 p.m. on July 4, 2008.

Dated: June 24, 2008.

D.J. Swatland,

Captain, U.S. Coast Guard, Acting Captain of the Port, San Francisco.

[FR Doc. E8–15059 Filed 7–1–08; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0589]

RIN 1625–AA00

Safety Zone; Olcott, NY Fireworks, Lake Ontario, Olcott, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Ontario, Olcott, NY. This zone is intended to restrict vessels from a portion of Lake Ontario during the July 3, 2008 Olcott, NY fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 10 p.m. to 11 p.m. on July 3, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0589 and are available online at *http://www.regulations.gov.* They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the U.S. Coast Guard Sector Buffalo, 1 Fuhrmann Boulevard, Buffalo, NY 14203 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have further questions on this temporary rule, call Commander Joseph Boudrow, Prevention Division, U.S. Coast Guard Sector Buffalo, at 716–843–9572. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when an agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the permit application was not received in time to publish a NPRM followed by a final rule before the effective date.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on accidents that have occurred in other Captain of the Port zones, and the explosive hazards of fireworks, the Captain of the Port Buffalo has determined that fireworks launches proximate to watercraft pose a significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the Olcott, NY fireworks display. The fireworks display will occur between 10 p.m. and 11 p.m. on July 3, 2008.

The safety zone for the fireworks will encompass all waters of Lake Ontario within a 600 FT Radius of position 43°20′24″ N, 078°43′09″ W, located on the West Federal pier.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities.

The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of Lake Ontario, Olcott, NY between 10 p.m. and 11 p.m. on July 3, 2008.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only one hour for one event. Vessel traffic can safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Buffalo to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that this Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedure; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded, under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental

documentation. This event establishes a safety zone therefore paragraph (34)(g) of the Instruction applies.

A final environmental analysis check list and a final categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–0589 is added as follows:

§ 165.T09–0589 Safety zone; Olcott, NY Fireworks, Lake Ontario, Olcott, NY.

(a) *Location.* The following area is a temporary safety zone: All waters of Lake Ontario, Olcott, NY, within a 600 ft Radius of position 43°20′24″ N, 078°43′09″ W, located on the West Federal Pier. (DATUM: NAD 83).

(b) *Effective period.* This zone will be effective from 10 p.m. to 11 p.m. on July 3, 2008.

(c) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo, or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo or his on-scene representative.

Dated: June 20, 2008.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. E8–15058 Filed 7–1–08; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0494]

RIN 1625–AA00

Safety Zone; City of Berkeley Fourth of July Fireworks Display, Berkeley, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the launching of fireworks being sponsored by the City of Berkeley. The fireworks display will be held on July 4, 2008, on the Berkeley Municipal Pier. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or his designated representative.

DATES: This rule is effective from 11 a.m. through 10 p.m. on July 4, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0494 and are available online at *http://www.regulations.gov*. They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and Coast Guard Sector San Francisco, 1 Yerba Buena Island, San Francisco, California, 94130, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Lieutenant Junior Grade Sheral Richardson, U.S. Coast Guard Sector San Francisco, at (415) 399–7436. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process was complete. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in the fireworks display.

Background and Purpose

The City of Berkeley is sponsoring a brief fireworks display on July 4, 2008. The fireworks show is meant for entertainment purposes and will be used to celebrate Independence Day. The fireworks display is scheduled to launch at 9:30 p.m., on July 4, 2008, and last thirty minutes. The safety zone is being issued to establish a temporary regulated area on San Francisco Bay around the fireworks launch site. The safety zone around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone on specified waters of San Francisco Bay. The safety zone will apply to the navigable waters around and under the fireworks site

within a radius of 500 feet. The fireworks launch site is on the Berkeley Municipal Pier and will be located in position 37°51′34″ N, 122°19′37″ W (NAD83).

The effect of the temporary safety zone will be to restrict general navigation in the vicinity of the fireworks launch site. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the safety zone. This safety zone is needed to keep spectators and vessels a safe distance away from the fireworks launch site to ensure the safety of participants, spectators, and transiting vessels.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of San Francisco Bay to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of

Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded, under the Instruction, that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation.

A final environmental analysis checklist and a final categorical exclusion determination will be available in the docket under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–047 to read as follows:

§ 165.T11–047 Safety Zone; City of Berkeley Fourth of July Fireworks Display, Berkeley, CA.

(a) *Location.* This temporary safety zone is established for the waters of San Francisco Bay surrounding the launch site for the fireworks display, taking place on the Berkeley Municipal Pier located in position 37°51′34″ N, 122°19′37″ W (NAD 83).

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF–16 or the 24-hour Command Center via telephone at (415) 399–3547.

(d) *Effective period.* This section is effective from 11 a.m. through 10 p.m. on July 4, 2008.

Dated: June 21, 2008.

D.J. Swatland,

Captain, U.S. Coast Guard, Acting Captain of the Port San Francisco.

[FR Doc. E8–14957 Filed 7–1–08; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0509]

RIN 1625–AA00

Safety Zone; Pittsburg Chamber of Commerce Fourth of July Fireworks Display, Pittsburg, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the navigable waters of the New York Slough for the loading, transport, and launching of fireworks used during the Pittsburg Chamber of Commerce Fireworks Display to be held on July 4, 2008. This safety zone is intended to prohibit vessels and people from entering into or remaining within the regulated areas in order to ensure the safety of participants and spectators.

DATES: This rule is effective from 9 a.m. through 10 p.m. on July 4, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0509 and are available online at *http://www.regulations.gov*. They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and Coast Guard Sector San Francisco, 1 Yerba Buena Island, San Francisco, California 94130, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Lieutenant Junior Grade Sheral Richardson, U.S. Coast Guard Sector San Francisco, at (415) 399–7436. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process was complete. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in the fireworks display.

Background and Purpose

The Pittsburg Chamber of Commerce will sponsor a fireworks display on July 4, 2008, in the waters of New York Slough. The fireworks display is meant for entertainment purposes. This safety zone is issued to establish a temporary restricted area in New York Slough around the fireworks launch barge during loading of the pyrotechnics, during the transit of the barge to the display location, and during the fireworks display. This restricted area around the launch barge is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barge. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

Discussion of Rule

The Coast Guard is establishing a safety zone in the navigable waters of New York Slough near Pittsburg Marina. During the loading of the fireworks barge, while the barge is being towed to the display location, and until the start of the fireworks display, the safety zone applies to the navigable waters around and under the fireworks barge within a radius of 100 feet. Fifteen minutes prior to and during the 20-minute fireworks display, the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around and under the fireworks barge within a radius of 1,000 feet.

Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 9 a.m. on July 4, 2008, and will take place at Pier 50 in San Francisco. Towing of the barge from Pier 50 to the display location is scheduled to take place between 1 p.m. and 8 p.m. on July 4, 2008. During the fireworks display, scheduled to start at approximately 9:30 p.m., the fireworks barge will be located approximately 400 feet from Pittsburg Marina on the New York Slough in position 38°02.42′ N, 121°52.97′ W (NAD 83).

The effect of the temporary, moving safety zone will be to restrict navigation in the vicinity of the fireworks barge while the fireworks are loaded at Pier 50, during the transit of the fireworks barge, and until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels a safe distance away from the fireworks barge to ensure the safety of participants, spectators, and transiting vessels.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of New York Slough to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded, under the Instruction, that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation.

A final environmental analysis checklist and a final categorical exclusion determination will be available in the docket under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165–T11–057 to read as follows:

§ 165–T11–057 Safety Zone; Pittsburg Chamber of Commerce Fourth of July Fireworks Display, Pittsburg, CA.

(a) *Location.* This temporary safety zone is established for the waters of New York Slough surrounding a barge used as a launch platform for a fireworks display.

(1) Loading of the pyrotechnics onto the fireworks barge will take place at Pier 50 in San Francisco.

(2) Towing of the barge from Pier 50 to the launch position.

(3) During the fireworks display, scheduled to start at approximately 9:30 p.m., the fireworks barge will be located approximately 400 feet from Pittsburg Marina on the New York Slough in position 38°02.42′ N, 121°52.97′ W (NAD 83).

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF–16 or the 24-hour Command Center via telephone at (415) 399–3547.

(d) This rule is effective from 9 a.m. through 10 p.m. on July 4, 2008.

Dated: June 23, 2008.

D.J. Swatland,

Captain, U.S. Coast Guard, Acting Captain of the Port San Francisco.

[FR Doc. E8–14988 Filed 7–1–08; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0516]

RIN 1625–AA00

Safety Zone; Tahoe City Fourth of July Fireworks Display, Tahoe City, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of Lake Tahoe for the loading, transport, and launching of fireworks to celebrate Independence Day. This safety zone is established to ensure the safety of participants and

spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or his designated representative.

DATES: This rule is effective from 9 a.m. through 10 p.m. on July 4, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0516 and are available online at *www.regulations.gov*. They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and Coast Guard Sector San Francisco, 1 Yerba Buena Island, San Francisco, California 94130, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Lieutenant Junior Grade Sheral Richardson, U.S. Coast Guard Sector San Francisco, at (415) 399–7436. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process was complete. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in the fireworks display.

Background and Purpose

Rotary Club of Tahoe City will sponsor a fireworks display on July 4, 2008, in the waters of Lake Tahoe. The fireworks display is meant for entertainment purposes to celebrate Independence Day. This safety zone is issued to establish a temporary restricted area in Lake Tahoe around the fireworks launch barge during loading of the pyrotechnics, during the transit of the barge to the display location, and during the fireworks display. This restricted area around the launch barge is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barge. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone in the navigable waters of the Lake Tahoe. During the loading of the fireworks barge, while the barge is being towed to the display location, and until the start of the fireworks display, the temporary safety zone applies to the navigable waters around and under the fireworks barge within a radius of 100 feet. From 9 p.m. until 10 p.m. on July 4, 2008, the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around and under the fireworks barge within a radius of 1,000 feet.

Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 9 a.m. on July 4, 2008, and will take place at Obexer's Boat Company, Homewood, California. Towing of the barge from Obexer's Boat Company to the display location is scheduled to take place between 10 a.m. and 2 p.m. on July 4, 2008. During the fireworks display, scheduled to commence at approximately 9:30 p.m. on July 4, 2008, the fireworks barge will be located approximately 600–700 feet off of the shore line of Tahoe City in position 39°10′00″ N, 120°08′00″ W. The fireworks display is scheduled to last approximately thirty minutes.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the fireworks barge while the fireworks are loaded, during the transit of the fireworks barge, and until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels a safe distance away from the fireworks barge to ensure the safety of participants, spectators, and transiting vessels.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of Lake Tahoe to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for

a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded, under the Instruction, that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation.

A final environmental analysis checklist and a final categorical exclusion determination will be available in the docket under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165–T11–061 to read as follows:

§ 165–T11–061 Safety Zone; Tahoe City Fourth of July Fireworks Display, Tahoe City, CA.

(a) *Location.* This temporary safety zone is established for the waters of Lake Tahoe.

(1) Loading of the pyrotechnics onto the fireworks barges will take place at Obexer Marina in Homewood, California.

(2) Towing of the barges from Obexer Marina to the display location.

(3) During the fireworks display, scheduled to commence at approximately 9:30 p.m. on July 4, 2008, the fireworks barge will be located

approximately 600–700 feet off of the shore line of Tahoe City in position 39°10′00″ N, 120°08′00″ W. These coordinates are based upon NAD 83.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF–16 or the 24-hour Command Center via telephone at (415) 399–3547.

(d) *Effective period.* This section is effective from 9 a.m. through 10 p.m. on July 4, 2008.

Dated: June 20, 2008.

D.J. Swatland,

Captain, U.S. Coast Guard, Acting Captain of the Port, San Francisco.

[FR Doc. E8–14990 Filed 7–1–08; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0502]

RIN 1625–AA00

Safety Zone; City of Martinez Fourth of July Fireworks Display, Martinez, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the launching of fireworks being sponsored by the City of Martinez. The fireworks display will be held on July 4, 2008, on the shoreline of Carquinez Straits. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or his designated representative.

DATES: This rule is effective from 8:30 p.m. through 10 p.m. on July 4, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0502 and are available online at *www.regulations.gov*. They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and Coast Guard Sector San Francisco, 1 Yerba Buena Island, San Francisco, California 94130, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Lieutenant Junior Grade Sheral Richardson, U.S. Coast Guard Sector San Francisco, at (415) 399–7436. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process was complete. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in the fireworks display.

Background and Purpose

The City of Martinez is sponsoring a brief fireworks display on July 4, 2008. The fireworks show is meant for entertainment purposes and will be used to celebrate Independence Day. The fireworks display is scheduled to launch at 9:30 p.m., on July 4, 2008, and last twenty minutes. The safety zone is being issued to establish a temporary regulated area on Carquinez Straits around the fireworks launch site. The safety zone around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone on specified waters of Carquinez Straits, for the City of Martinez Fourth of July Fireworks Display. The safety zone will apply to the navigable waters around the fireworks site within a radius of 500 feet. The fireworks launch site is on the shoreline of Martinez and will be located in position 38°01′32″ N, 122°08′24″ W (NAD83).

The effect of the temporary safety zone will be to restrict general navigation in the vicinity of the fireworks launch site. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the safety zone. This safety zone is needed to keep spectators and vessels a safe distance away from the fireworks launch site to ensure the safety of participants, spectators, and transiting vessels.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs

and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of Carquinez Straits to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded, under the Instruction, that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the

Instruction, from further environmental documentation.

A final environmental analysis checklist and a final categorical exclusion determination will be available in the docket under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165–T11–048 to read as follows:

§ 165–T11–048 Safety Zone; City of Martinez Fourth of July Fireworks Display, Martinez, CA.

(a) *Location.* The temporary safety zone is on specified waters of Carquinez Straits. The safety zone will apply to the navigable waters around fireworks site within a radius of 500 feet. The fireworks launch site is on the shoreline of Martinez and will be located in position 38°01′32″ N, 122°08′24″ W (NAD83).

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF–16 or the 24-hour Command Center via telephone at (415) 399–3547.

(d) *Effective period.* This section is effective from 8:30 p.m. through 10 p.m. on July 4, 2008.

Dated: June 20, 2008.

D.J. Swatland,

Captain, U.S. Coast Guard, Acting Captain of the Port San Francisco.

[FR Doc. E8–14989 Filed 7–1–08; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0590]

RIN 1625–AA00

Safety Zones; Fireworks Displays Within the Sector Delaware Bay Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will establish several safety zones for fireworks displays at various locations within the geographic boundary of the Sector Delaware Bay Captain of the Port Zone. This action is necessary to protect the life and property of the maritime public from the hazards posed by fireworks displays. Entry into or movement within these proposed zones during the enforcement periods is prohibited without approval of the Captain of the Port.

DATES: This rule is effective from July 3, 2008 through September 6, 2008.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0590 and are available online at *www.regulations.gov.* This material is also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and Coast Guard Sector Delaware Bay, One Washington Avenue, Philadelphia, Pennsylvania 19147 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call MST2 Jan-Michael Myers, Waterways Management Division, at (215) 271–4889. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule, publishing an NPRM would be impracticable and contrary to public interest since immediate action is needed to minimize potential danger to the public during this safety zone. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction and on scene Coast Guard and local law enforcement assets will also provide notice to mariners.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, because immediate action is needed to ensure the safety of the event. However, notifications will be made to users of the effected areas via marine information broadcasts, local notice to mariners, commercial radio stations and area newspapers. Safety zones are enforced during fireworks displays in order to prevent personal injury to mariners and damage to vessel traffic as a result of burning debris in the secured fallout area. Coast Guard assets and the on scene patrol commander serve to protect mariners on the navigable waterways during these permitted marine events.

Background and Purpose

Each year organizations in the Sector Delaware Bay Captain of the Port Zone sponsor fireworks displays in the same general location and time period. Each event uses a barge or an on-shore site near the shoreline as the fireworks launch platform. A safety zone is used to control vessel movement within a

specified distance surrounding the launch platforms to ensure the safety of persons and property. Coast Guard personnel on scene could allow persons within the safety zone if conditions permit. Seven locations require the establishment of safety zones. These locations are the following: 1. North Atlantic Ocean, Bethany Beach, DE; 2. North Atlantic Ocean, Avalon, NJ; 3. Barnegat Bay, Barnegat Township, NJ; 4. North Atlantic Ocean, Cape May, NJ; 5. Great Egg Harbor Inlet, Margate City, NJ; 6. North Atlantic Ocean, Ocean City, NJ; 7. Metedeconk River, Brick Township, NJ.

The Coast Guard Captain of the Port would give notice of the enforcement of each safety zone by all appropriate mean to provide the widest publicity among affected segments of the public. This would include publication in the Local Notice to Mariners and Marine Information Broadcasts. Marine information and facsimile broadcasts may also be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public.

This rule is to provide for the safety of life on navigable waters during the events and to give the marine community adequate notice of the specific locations and times for each event.

Discussion of Rule

The Coast Guard revises the regulations by adding the following seven temporary safety zone locations. All coordinates listed for the following safety zones reference Datum NAD 1983.

North Atlantic Ocean, Bethany Beach, DE, Safety Zone

The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks launch platform in approximate position latitude 38°32′08″ N, longitude 075°03′15″ W, on the shoreline at Bethany Beach, DE.

North Atlantic Ocean, Avalon, NJ, Safety Zone

The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate position latitude 39°05′31″ N, longitude 074°43′00″ W, in the vicinity of the shoreline at Avalon, NJ.

Barnegat Bay, Barnegat Township, NJ, Safety Zone

The waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°44′50″ N, longitude 074°11′21″ W, approximately 70 yards north of Conklin Island, NJ.

North Atlantic Ocean, Cape May, NJ, Safety Zone

The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate position latitude 38°55′36″ N, longitude 074°55′26″ W, immediately adjacent to the shoreline at Cape May, NJ.

Great Egg Harbor Inlet, Margate City, NJ, Safety Zone

All waters within a 500 yard radius of the fireworks barge in approximate position latitude 39°19′33″ N, longitude 074°31′28″ W, on the Intracoastal Waterway near Margate City, NJ.

North Atlantic Ocean, Ocean City, NJ, Safety Zone

The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate position latitude 39°16′22″ N, longitude 074°33′54″ W, in the vicinity of the shoreline at Ocean City, NJ.

Metedeconk River, Brick Township, NJ, Safety Zone

The waters of the Metedeconk River within a 300 yard radius of the fireworks launch platform in approximate position latitude 40°03′24″ N, longitude 074°06′42″ W, on the shoreline at Brick Township, NJ.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation restricts vessel traffic from transiting a small segments of coastal waters and the intracoastal waterway, the effect of this regulation will not be significant due to the limited durations that the regulated areas will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts and area newspapers so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities some of which may be small entities: The owners and operator of vessels intending to transit or anchor in the safety zones during the times these zones are enforced.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The enforcement periods will be short in duration and in many of the zones vessels can transit safely around the safety zones. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except during the period that the Coast Guard patrol vessel is present. Before the enforcement period, we will issue maritime advisories widely.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded, under the Instruction, that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule because the included events are all of very short duration lasting only 2 hours or less each.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1226, 1231; 46 U.S.C Chapter 701; 50 U.S.C 191,195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary 165.T05–001, to read as follows:

§ 165.T05–001 North Atlantic Ocean, Bethany Beach, DE, Safety Zone.

(a) *Location.* The following area is a temporary safety zone: The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks launch platform in approximate location latitude 38°32′08″ N, longitude 075°03′15″ W, on the shoreline of Bethany Beach, DE.

(b) *Effective Period.* The effective period for this event is on July 4, 2008 from 9 p.m. to 9:30 p.m.

(c) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) No person or vessel may enter or navigate within this safety zone unless authorized to do so by the Coast Guard or designated representatives. Any person or vessel authorized to enter the safety zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the safety zone immediately if the Coast Guard or designated representative so orders.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(3) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Definitions.* The Captain of the Port means the Commanding Officer of Sector Delaware Bay or any Coast Guard commissioned warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

■ 3. Add temporary § 165.T05–002, to read as follows:

§ 165.T05–002 North Atlantic Ocean, Avalon, NJ, Safety Zone.

(a) *Location.* The following area is a temporary safety zone: The waters of the

North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°05′31″ N, longitude 074°43′00″ W, in the vicinity of the shoreline at Avalon, NJ.

(b) *Effective Period.* The effective period for this event is on July 5, 2008 from 8 p.m. to 10 p.m.

(c) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) No person or vessel may enter or navigate within this safety zone unless authorized to do so by the Coast Guard or designated representatives. Any person or vessel authorized to enter the safety zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the safety zone immediately if the Coast Guard or designated representative so orders.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(3) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Definitions.* The Captain of the Port means the Commanding Officer of Sector Delaware Bay or any Coast Guard commissioned warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

■ 4. Add temporary § 165.T05–003, to read as follows:

§ 165.T05–003 Barnegat Bay, Barnegat Township, NJ, Safety Zone.

(a) *Location.* The following area is a temporary safety zone: The waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°44′50″ N, longitude 074°11′21″ W, approximately 70 yards north of Conklin Island, NJ.

(b) *Effective Period.* The effective period for this event is on July 4, 2008 from 9:15 p.m. to 9:45 p.m.; and on September 6, 2008 from 9 p.m. to 9:30 p.m.

(c) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) No person or vessel may enter or navigate within this safety zone unless authorized to do so by the Coast Guard or designated representatives. Any person or vessel authorized to enter the safety zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the safety zone immediately if the Coast Guard or designated representative so orders.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(3) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF-FM marine band radio, channel 22 (157.1 MHZ).

(d) *Definitions.* The Captain of the Port means the Commanding Officer of Sector Delaware Bay or any Coast Guard commissioned warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

■ 5. Add temporary § 165.T05–004, to read as follows:

§ 165.T05–004 North Atlantic Ocean, Cape May, NJ, Safety Zone.

(a) *Location.* The following area is a temporary safety zone: The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate position latitude 38°55′36″ N, longitude 074°55′26″ W, immediately adjacent to the shoreline at Cape May, NJ.

(b) *Effective Period.* The effective period for this event is on July 4, 2008 from 9 p.m. to 9:30 p.m.; with a rain date of July 5, 2008.

(c) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) No person or vessel may enter or navigate within this safety zone unless authorized to do so by the Coast Guard or designated representatives. Any person or vessel authorized to enter the safety zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the safety zone immediately if the Coast Guard or designated representative so orders.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(3) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Definitions.* The Captain of the Port means the Commanding Officer of Sector Delaware Bay or any Coast Guard commissioned warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

■ 6. Add temporary § 165.T05–005, to read as follows:

§ 165.T05–005 Great Egg Harbor Inlet, Margate City, NJ, Safety Zone.

(a) *Location.* The following area is a temporary safety zone: All waters within a 500 yard radius of the fireworks barge in approximate position latitude 39°19′33″ N, longitude 074°31′28″ W, on the Intracoastal Waterway near Margate City, NJ.

(b) *Effective Period.* The effective period for this event is on August 24, 2008 from 8:30 p.m. to 10:30 p.m.

(c) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) No person or vessel may enter or navigate within this safety zone unless authorized to do so by the Coast Guard or designated representatives. Any person or vessel authorized to enter the safety zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the safety zone immediately if the Coast Guard or designated representative so orders.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(3) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Definitions.* The Captain of the Port means the Commanding Officer of Sector Delaware Bay or any Coast Guard commissioned warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

■ 7. Add temporary § 165.T05–006, to read as follows:

§ 165.T05–006 North Atlantic Ocean, Ocean City, NJ, Safety Zone.

(a) *Location.* The following area is a temporary safety zone: The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate position latitude 39°16′22″ N, longitude 074°33′54″ W, in the vicinity of the shoreline at Ocean City, NJ.

(b) *Effective Period.* The effective period for this event is on July 4, 2008 from 9 p.m. to 9:15 p.m.; with a rain date of July 5, 2008.

(c) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) No person or vessel may enter or navigate within this safety zone unless authorized to do so by the Coast Guard or designated representatives. Any person or vessel authorized to enter the

safety zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the safety zone immediately if the Coast Guard or designated representative so orders.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(3) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Definitions.* The Captain of the Port means the Commanding Officer of Sector Delaware Bay or any Coast Guard commissioned warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

■ 8. Add temporary § 165.T05–007, to read as follows:

§ 165.T05–007 Metedeconk River, Brick Township, NJ, Safety Zone.

(a) *Location.* The following area is a temporary safety zone: The waters of the Metedeconk River within a 300 yard radius of the fireworks launch platform in approximate position latitude 40°03′24″ N, longitude 074°06′42″ W, on the shoreline at Brick Township, NJ.

(b) *Effective Period.* The effective periods for this event are on July 3, July 17, July 31, August 14, and August 28, 2008 from 6 p.m. to 10 p.m.; with rain dates of July 10, July 24, August 7, August 21, and September 4, 2008, respectively.

(c) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) No person or vessel may enter or navigate within this safety zone unless authorized to do so by the Coast Guard or designated representatives. Any person or vessel authorized to enter the safety zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the safety zone immediately if the Coast Guard or designated representative so orders.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(3) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Definitions.* The Captain of the Port means the Commanding Officer of Sector Delaware Bay or any Coast Guard commissioned warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

Dated: June 19, 2008.

D.L. Scott,

Captain, U.S. Coast Guard, Captain of the Port Sector Delaware Bay.

[FR Doc. E8–15045 Filed 7–1–08; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0558]

RIN 1625–AA00

Security Zone; USCGC EAGLE, Elliott Bay, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is establishing a 100 yard temporary security zone surrounding the USCGC EAGLE during a reception while anchored in Elliott Bay, Seattle, Washington. This security zone is necessary to ensure the safety of dignitaries embarked on USCGC EAGLE for the reception. Entry into, transit through, mooring, or anchoring within this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

DATES: This rule is effective from 12 noon. (PDT) to 11 p.m. (PDT) on July 2, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0558 and are available for inspection or copying at USCG Sector Seattle, Waterways Management Division between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning this rule, call Ensign Heidi A. Bevis, Waterways Management Division, U.S. Coast Guard Sector Seattle, at 206–217–6147.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of the dignitaries that will be on board USCGC EAGLE on the date and times this rule will be in effect. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event.

Under 5 U.S.C. 553(d)(3), the U.S. Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Making this rule effective less than 30 days after publication is necessary to ensure the safety of the dignitaries that will be onboard the USCGC EAGLE on the date and times this rule will be in effect.

Background and Purpose

The U.S. Coast Guard is establishing a 100 yard temporary security zone surrounding USCGC EAGLE to provide for the safety of visiting dignitaries while on board USCGC EAGLE for a reception. USCGC EAGLE's presence in the Puget Sound is part of the annual ASTA Pacific Tall Ships Challenge and the Tacoma Tall Ships 2008 Event. The U.S. Coast Guard is establishing this zone to ensure that no unauthorized vessels or persons enter into the 100 yard area surrounding the USCGC EAGLE. The security zone is needed to protect the dignitaries from any waterborne threats.

Discussion of Rule

This rule will control the movement of all vessels and persons in a security zone surrounding USCGC EAGLE as indicated in section 2 of this Temporary Final Rule. The security zone includes all waters within 100 yards surrounding USCGC EAGLE. The security zone does not extend on land.

The U.S. Coast Guard through this action intends to promote the security of personnel and USCGC EAGLE. Entry into this zone by all vessels or persons will be prohibited unless authorized by the Captain of the Port. This security zone will be enforced by U.S. Coast Guard personnel. The Captain of the Port may be assisted by other federal, state, or local agencies as needed.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This rule will be in effect for only 11 hours and vessel traffic can pass safely around the security zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The U.S. Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only 11 hours and vessel traffic can pass safely around the security zone. Before the effective period, we will issue maritime advisories widely available throughout the Puget Sound.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule because it concerns an emergency situation of less than 1 week in duration.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapters 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. From 12 noon (PDT) to 11 p.m. (PDT) on July 2, 2008, a temporary § 165.T13–048 is added to read as follows:

§ 165.T13–048 Security Zone: USCGC EAGLE, Elliott Bay, Seattle, Washington.

(a) *Location.* The following area is a security zone: 100 yards surrounding the USCGC EAGLE during a reception while anchored in Elliott Bay, Seattle, Washington.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel may enter, transit, moor, or anchor within this security zone, except for vessels authorized by the Captain of the Port or his designated representatives.

(c) *Enforcement period.* This section is effective from 12 noon (PDT) to 11 p.m. (PDT) on July 2, 2008. If the need for the security zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of

this section and will announce that fact via Broadcast Notice to Mariners.

Dated: June 20, 2008.

Stephen P. Metruck,

Captain, U. S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. E8–15040 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2007–0157]

RIN 1625–AA87

Security Zone; Escorted Vessels, Savannah, GA, Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a security zone around any escorted vessel by one or more Coast Guard, State, or local law enforcement assets on the navigable waters of the Captain of the Port (COTP) Zone, Savannah, Georgia. This action is necessary to protect personnel, vessels, and facilities from sabotage or other subversive acts, accidents, or other events of a similar nature. No vessel or person is allowed in this zone unless authorized by the Captain of the Port or a designated representative.

DATES: This interim rule is effective July 2, 2008. Comments and related material must reach the Docket Management Facility on or before August 1, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2007–0157 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov*.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call LT Jeanita Jefferson at MSU Savannah (912) 652–4353. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2007–0157), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. For example, we may ask you to resubmit your comment if we are not able to read your original submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time, click on ''Search for Dockets,'' and enter the docket number for this rulemaking (USCG–2007–0157) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov*.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing a NPRM and delaying the effective date would be contrary to public interest since the security zones around escorted vessels are necessary to ensure the safe transit of the escorted vessels as well as the public. Certain vessel movements are more vulnerable to terrorist acts and it would be contrary to the public interest to publish an NPRM that would delay the effective date of this rule. The Coast Guard coordinates escorts for vessels in the Captain of the Port Zone Savannah, Georgia for the port's safety and security. To ensure safe boating, it is imperative that a standard exclusionary zone be broadcast and safe speeds be followed for all escorted vessels.

For the same reasons above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The terrorist attacks of September 2001 heightened the need for development of various security measures throughout the seaports of the United States, particularly around vessels and facilities whose presence or

movement creates a heightened vulnerability to terrorist acts; or those for which the consequences of terrorist acts represent a threat to national security. The President of the United States has found that the security of the United States is and continues to be endangered following the attacks of September 11 (E.O. 13,273, 67 FR 56215, Sep. 3, 2002 and 72 FR 54205, Sep. 21, 2007). Additionally, national security and intelligence officials continue to warn that future terrorist attacks are likely.

The Captain of the Port Zone Savannah, Georgia frequently receive vessels that require additional security, including, but not limited to, vessels carrying sensitive Department of Defense cargoes, vessels carrying dangerous cargoes, and foreign naval vessels. The Captain of the Port has determined that these vessels have a significant vulnerability to subversive activity by other vessels or persons, or, in some cases, themselves pose a risk to a port and the public within the Captain of the Port Zone, as described in 33 CFR 3.35–15. This rule enables the COTP Savannah to provide effective port security, while minimizing the public's confusion and easing the administrative burden of implementing separate temporary security zone rules for each escorted vessel.

Discussion of Rule

This rule establishes a security zone that prohibits persons and vessels from coming within 300 yards of all escorted vessels within the navigable waters of the Captain of the Port Zone Savannah, Georgia unless authorized by the Coast Guard Captain of the Port, or Captain of the Port's designated representative.

The navigable waterways included in this rule are the Port of Savannah and the Port of Brunswick in Georgia. Persons or vessels that receive permission to enter the security zone must proceed at a minimum safe speed and must comply with all orders issued by the COTP or a designated representative. Those vessels granted permission to enter the 300-yard security zone may not come within 50 yards of an escorted vessel. An escorted vessel will be defined as a vessel, other than a large U.S. naval vessel as defined in 33 CFR 165.2015, that is accompanied by one or more Coast Guard assets or other Federal, State or local law enforcement agency assets clearly identifiable by lights, vessel markings, or with agency insignia as listed below:

- Coast Guard surface or air asset displaying the Coast Guard insignia.
- State and/or local law enforcement asset displaying the applicable agency markings and/or equipment associated with the agency.
- When escorted vessels are moored, dayboards or other visual indications such as lights or buoys may be used. In all cases, broadcast notice to mariners will be issued to advise mariners of these restrictions.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The limited geographic area impacted by the security zone will not restrict the movement or routine operation of commercial or recreational vessels through the Ports of Savannah and Brunswick, Georgia.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit in the vicinity of escorted vessels. This rule would not have a significant impact on a substantial number of small entities because the zones are limited in size, in most cases leaving ample space for vessels to navigate around them. The zones will not significantly impact commercial and passenger vessel traffic patterns, and mariners will be notified of the zones via Broadcast Notice to Mariners. Where such space is not available and security conditions permit, the Captain of the Port will attempt to provide flexibility for individual vessels to transit through the zones as needed.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Once the comment period is closed and all comments have been addressed, a final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.749 to read as follows:

§ 165.749 Security Zone: Escorted Vessels, Savannah, Georgia, Captain of the Port Zone.

(a) *Definitions.* The following definitions apply to this section:

COTP means Captain of the Port Savannah, GA.

Designated representatives means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the COTP, in the enforcement of the security zone.

Escorted vessel means a vessel, other than a large U.S. naval vessel as defined in 33 CFR 165.2015, that is accompanied by one or more Coast Guard assets or other Federal, State or local law enforcement agency assets clearly identifiable by lights, vessel markings, or with agency insignia as listed below:

(1) Coast Guard surface or air asset displaying the Coast Guard insignia.

(2) State and/or local law enforcement asset displaying the applicable agency markings and/or equipment associated with the agency.

(3) When escorted vessels are moored, dayboards or other visual indications such as lights or buoys may be used. In all cases, broadcast notice to mariners will be issued to advise mariners of these restrictions.

Minimum safe speed means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to minimum safe speed. In no instance should minimum safe speed be interpreted as a speed less than that required for a particular vessel to maintain steerageway. A vessel is not proceeding at minimum safe speed if it is:

(1) On a plane;

(2) In the process of coming up onto or coming off a plane; or

(3) Creating an excessive wake.

(b) *Regulated Area.* All navigable waters, as defined in 33 CFR 2.36, within the Captain of the Port Zone, Savannah, Georgia 33 CFR 3.35–15.

(c) *Security Zone.* A 300-yard security zone is established around each escorted vessel within the regulated area described in paragraph (b) of this section. This is a moving security zone when the escorted vessel is in transit and becomes a fixed zone when the escorted vessel is anchored or moored. A security zone will not extend beyond the boundary of the regulated area in this section.

(d) *Regulations.* (1) The general regulations for security zones contained in § 165.33 of this part apply to this section.

(2) A vessel may request the permission of the COTP Savannah or a designated representative to enter the security zone described in paragraph (c) of this section. If permitted to enter the security zone, a vessel must proceed at the minimum safe speed and must comply with the orders of the COTP or a designated representative. No vessel or person may enter the inner 50-yard portion of the security zone closest to the vessel.

(e) *Notice of Security Zone.* The COTP will inform the public of the existence or status of the security zones around escorted vessels in the regulated area by Broadcast Notice to Mariners. Coast Guard assets or other Federal, State or local law enforcement agency assets will be clearly identified by lights, vessel markings, or with agency insignia.

When escorted vessels are moored, dayboards or other visual indications such as lights or buoys may be used.

(f) *Contact Information.* The COTP Savannah may be reached via phone at (912) 652–4353. Any on scene Coast Guard or designated representative assets may be reached via VHF–FM channel 16.

Dated: June 11, 2008.

D.W. Murk,

Commander, U.S. Coast Guard, Captain of the Port, Captain of the Port Zone Savannah.

[FR Doc. E8–14955 Filed 7–1–08; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201, 202, 203, 204, 205, and 211

[Docket No. RM 2008–4]

Copyright Rules and Regulations

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule, technical amendments.

SUMMARY: The Copyright Office is making non–substantive housekeeping amendments to its regulations to update them and to correct minor errors.

EFFECTIVE DATE: July 1, 2008.

FOR FURTHER INFORMATION CONTACT: Tanya Sandros, General Counsel. Copyright GC/I&R, P.O. Box 70400. Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Copyright Office periodically reviews its regulations as published in the Code of Federal Regulations (CFR) to correct minor errors in the published text and to make technical amendments. This final rule corrects minor errors identified in the published rules but also makes technical amendments required because of new office designations and other non–substantial changes resulting from the business process reengineering initiative that was implemented by the Office in July 2007. The following parts are amended to make these corrections: parts 201, 202, 203, 204, 205, and 211.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 202

Copyright, Registration.

37 CFR Part 203

Freedom of Information Act.

37 CFR Part 204

Privacy Act.

37 CFR Part 205

Legal processes.

37 CFR Part 211

Mask works.

37 CFR Part 212

Vessel hull designs.

37 CFR Part 251

Administrative practice and procedure, Hearing and appeal procedures.

37 CFR Part 253

Copyright, Noncommercial educational broadcasting.

37 CFR Part 254

Coin–operated phonorecord players, Compulsory license fees.

37 CFR Part 255

Compulsory license fees, Phonorecords.

37 CFR Part 260

Copyright, Digital audio transmissions, Performance right, Sound recordings.

37 CFR Part 261

Copyright, Digital audio transmissions, Performance right, Sound recordings.

37 CFR Part 262

Copyright, Digital audio transmissions, Performance right, Sound recordings.

37 CFR Part 263

Copyright, Digital audio transmissions, Performance right, Sound recordings.

37 CFR Part 270

Notice of use, Sound recordings, Statutory license.

Final Rule

■ Accordingly, 37 CFR Chapter II is amended by making the following corrections and amendments:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 201. 1 [Amended]

■ 2. Amend § 201. 1 as follows:

a. In paragraph (a)(3), by removing ''Certifications and Documents Section, LM–402,'' and adding in its place ''Records Research and Certification Section, LM–455,'';

b. In paragraph (a)(4), by removing ''Reference and Bibliography Section, LM–450,'' and adding in its place ''Records Research and Certification Section, LM–455,'';

c. In paragraph (b)(1), by removing ''Certifications and Documents Section or Reference and Bibliography Section'' and adding in its place ''Records Research and Certification Section''; and removing ''Southwest Station''.

d. By revising paragraph (b)(2).

The revisions to § 201. 1 read as follows:

§ 201.1 Communication with the Copyright Office

* * * * *

(b) * * *

(2) *Copyright Royalty Board. See* § 301. 2 of this title for the mailing address for claims, pleadings, and general correspondence intended for the Copyright Royalty Board.

§ 201. 2 [Amended]

■ 3. Amend § 201. 2 as follows:

a. In paragraph (b)(1), by removing ''Certifications and Documents Section'' and adding in its place ''Records Research and Certification Section'';

b. In paragraph (b)(2), by removing ''Records Maintenance Unit'' and adding in its place ''Records Management Section'';

c. In (b)(3) introductory text, by removing ''Information and Reference Division'' and adding in its place ''Information and Records Division''.

d. In paragraph (b)(3)(i) introductory text by removing ''Certification and Documents Section'' and adding in its place ''Records Research and Certification Section'';

e. In the undesignated text at the end of paragraph (b)(4), by removing ''Public Information Office'' and adding in its place ''Copyright Information Section''.

f. In paragraph (b)(5), by removing ''Southwest Station''; and

g. In paragraphs (b)(7) and (d)(1)(iv), by removing ''Certifications and Documents Section'' each place it appears and adding in its place ''Records Research and Certifications Section''.

§ 201. 5 [Amended]

■ 4. Amend § 201. 5(c)(2) by removing ''Public Information Office'' and adding in its place ''Copyright Information Section''.

§ 201. 8 [Amended]

■ 5. Amend § 201. 8(g) as follows:

a. By removing ''Copyright Office Receiving & Processing Division'' and

adding in its place ''Copyright Office Receipt, Analysis and Control Division'';

b. By removing ''Copyright Office Public Information Office'' and adding in its place ''Copyright Information Section''; and

c. By removing ''Receiving & Processing Division'' and adding in its place ''Receipt, Analysis and Control Division''.

§ 201. 29 [Amended]

■ 6. Amend § 201. 29(e)(3) by removing ''Room LM–458'' and adding in its place ''Room LM–504''.

§ 201. 33 [Amended]

■ 7. Amend § 201. 33(d)(1) by removing ''Southwest Station''.

§ 201. 34 [Amended]

■ 8. Amend § 201. 34(d)(2) by removing ''Southwest Station''.

§ 201. 38 [Amended]

■ 9. Amend § 201. 38 as follows:

a. In paragraph (e), by removing ''Public Information Office of the Copyright Office'' and adding in its place ''Copyright Information Section'' and by removing ''Southwest Station''.

b. In paragraph (f), by removing ''Public Information Office of the Copyright Office'' and adding in its place ''Copyright Information Section''.

§ 201. 39 [Amended]

■ 10. Amend § 201. 39(g)(1) by removing ''Public Information Office'' and adding in its place ''Copyright Information Section''.

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 11. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(i), 702.

§ 202. 3 [Amended]

■ 12. Amend § 202. 3 as follows:

a. In paragraph (b)(2)(i) and (ii), introductory text, by removing ''Public Information Office'' and adding in its place ''Copyright Information Section'' each place it appears; and

b. In paragraph (b)(6)(ii), by removing ''Library of Congress, Group Periodicals Registration'' and adding in its place ''Group Periodicals Registration, Library of Congress.''

§ 202. 5 [Amended]

■ 13. Amend § 202. 5 as follows:

a. In paragraphs (b) introductory text, (b)(1), (b)(3), (b)(4), (c) introductory text, (c)(1) and (c)(3), by removing ''Examining Division'' each place it appears and adding in its place ''Registration and Recordation Program ;

b. In paragraph (d)(1), by removing ''Copyright R&P Division'' and adding in its place ''Copyright RAC Division''.

§ 202. 12 [Amended]

■ 14. Amend § 202. 12(c)(4)(vi) by removing ''Performing Arts Section of the Examining Division'' and adding in its place ''Performing Arts Division of the Registration and Recordation Program''.

§ 202. 16 [Amended]

■ 15. Amend § 202. 16(c)(11) by removing ''Certification and Documents Section of the Information and Reference Division'' and adding in its place ''Records Research and Certification Section of the Information and Records Division''.

§ 202. 17 [Amended]

■ 16. Amend § 202. 17(g)(1) by removing ''Public Information Office'' and adding in its place ''Copyright Information Section''.

§ 202. 19 [Amended]

■ 17. Amend § 202. 19(e)(3) by removing ''Chief, Examining Division'' and adding in its place ''Associate Register for Registration and Recordation Program''.

§ 202. 20 [Amended]

■ 18. Amend § 202. 20 as follows:

a. In paragraphs (c)(2)(ii), (c)(2)(xvi), and (c)(2)(xix)(B), by removing ''Examining Division'' each place it appears and adding in its place ''Registration and Recordation Program.''; and

b. In paragraphs (d)(3), by removing ''Chief, Examining Division'' and adding in its place ''Associate Register for Registration and Recordation Program''.

§ 202. 21 [Amended]

■ 19. Amend § 202. 21(h) by removing ''Examining Division'' and adding in its place ''Registration and Recordation Program''.

§ 202. 23 [Amended]

■ 20. Amend § 202. 23(b)(2) by removing ''Information and Reference Division'' and adding in its place ''Information and Records Division''.

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

■ 21. The authority citation for part 203 continues to read as follows:

Authority: 17 U.S.C. 702, 5 U.S.C. 552.

§ 203. 3 [Amended]

■ 22. Amend § 203. 3 as follows:

a. In paragraph (b) introductory text, by removing ''Associate Register of Copyright for Operations'' and adding in its place ''Copyright Office Chief of Operations'';

b. In paragraph (b)(1), by removing ''Receiving and Processing Division'' and adding in its place ''Receipt, Analysis and Control Division'';

c. In paragraph (b)(2), by removing ''Examining Division'' and adding in its place ''Registration and Recordation Program'';

d. In paragraph (b)(3), by removing ''Cataloging Division'' and adding in its place ''Registration and Recordation Program'';

e. In paragraph (b)(4) by removing ''Information and Reference Division'' and adding in its place ''Information and Records Division'' each place it appears; and by removing ''Public Information Office'' and adding in its place ''Copyright Information Section'';

f. In paragraphs (b)(5) and (c), by removing ''Copyright Arbitration Royalty Panels'' each place it appears and adding in its place ''Copyright Royalty Board''; and

g. By removing paragraph (e) and redesignating paragraphs (f) through (i) as paragraphs (e) through (h), respectively.

§ 203. 4 [Amended]

■ 23. Amend § 203. 4(f) by removing ''Southwest Station'' each place it appears.

PART 204—PRIVACY ACT: POLICIES AND PROCEDURES

■ 24. The authority citation for part 204 continues to read as follows:

Authority: 17 U.S.C. 702, 5 U.S.C. 552(a).

§ 204.4 [Amended]

■ 25. Amend § 204.4(a) by adding ''Copyright'' before ''Information Section'' and by removing ''Southwest Station''.

§ 204.5 [Amended]

■ 26. Amend § 204.5(a) by adding ''Copyright'' before ''Information Section'' and by removing ''Southwest Station''.

§ 204.7 [Amended]

■ 27. Amend § 204.7(a) by adding ''Copyright'' before ''Information Section'' and by removing ''Southwest Station''.

§ 204.8 [Amended]

■ 28. Amend § 204.8(a) by removing ''Southwest Station''.

PART 205—PRODUCTION OF LEGAL DOCUMENTS AND OFFICIAL TESTIMONY

■ 29. The authority citation for part 205 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 205.2 [Amended]

■ 30. Amend § 205.2 as follows:

a. In paragraph (a), by removing ''Southwest Station''; and

b. In paragraph (b), by removing ''Public Information Office'' and adding in its place ''Copyright Information Section''.

§ 205.13 [Amended]

■ 31. Amend § 205.13 by removing ''Southwest Station'' and by removing ''Public Information Office'' and adding in its place ''Copyright Information Section''.

§ 205.22 [Amended]

■ 32. Amend § 205.22 (a) and (b) by removing '' Certifications and Documents Section'' and adding in its place ''Records Research and Certification Section'' each place it appears.

PART 211—MASK WORK PROTECTION

■ 33. The authority citation for part 211 continues to read as follows:

Authority: 17 U.S.C. 702 and 908.

§ 211. 4 [Amended]

■ 34. Amend § 211. 4(b)(1) by removing ''Public'' and adding ''Copyright'' in its place.

§ 211. 5 [Amended]

■ 35. Amend § 211. 5(d) by removing ''Chief, Examining Division of the Copyright Office, Washington, DC 20559–6000'' and adding in its place ''Associate Register for Registration and Recordation Program, Library of Congress, Copyright Office – RPO, 101 Independence Avenue, SE, Washington, DC 20559–6200''.

Dated: June 24, 2008

Marybeth Peters,

Register of Copyright,

U.S. Copyright Office.

[FR Doc. E8–14890 Filed 7–1–08; 8:45 am]

BILLING CODE 1410–33–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0178; FRL–8687–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for the Columbia County Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) submitted a SIP revision consisting of a maintenance plan that provides for continued attainment of the 8-hour ozone national ambient air quality standard (NAAQS) for at least 10 years after the April 30, 2004 designations, as well as a 2002 base-year inventory for the Columbia County Area. EPA is approving the maintenance plan and the 2002 base-year inventory for the Columbia County Area as revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on August 1, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2008–0178. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environment Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 14, 2008 (73 FR 27783), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Pennsylvania's SIP revision that establishes a maintenance plan for the Columbia County Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after designation, and a 2002 base-year emissions inventory. The formal SIP revisions were submitted by PADEP on December 17, 2007. Other specific requirements of Pennsylvania's SIP revision and the rationales for EPA's proposed actions are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving the maintenance plan and the 2002 base-year inventory for the Columbia County Area, submitted on December 17, 2007, as revisions to the Pennsylvania SIP. EPA is approving the maintenance plan and 2002 base-year inventory for the Columbia County Area because it meets the requirements of section 110(a)(1) of the CAA.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52. 02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 2, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the maintenance plan and the 2002 base-year inventory for the Columbia County Area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 24, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDed]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. In § 52. 2020, the table in paragraph (e)(1) is amended by adding an entry for the 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for Columbia County at the end of the table to read as follows:

§ 52. 2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory.	Columbia County	12/17/07	7/02/08. [Insert page number where the document begins].	

* * * * *

[FR Doc. E8–14869 Filed 7–1–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0182; FRL–8687–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for the Susquehanna County Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) submitted a SIP revision consisting of a maintenance plan that provides for continued attainment of the 8-hour ozone national ambient air quality standard (NAAQS) for at least 10 years after the April 30, 2004 designations, as well as a 2002 base-year inventory for the Susquehanna County Area. EPA is approving the maintenance plan and the 2002 base-year inventory for the Susquehanna County Area as revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on August 1, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2008–0182. All documents in the docket are listed in the *http://www.regulations.gov* website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during

normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environment Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 14, 2008 (73 FR 27788), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Pennsylvania's SIP revision that establishes a maintenance plan for the Susquehanna County Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after designation, and a 2002 base-year emissions inventory. The formal SIP revisions were submitted by PADEP on December 17, 2007. Other specific requirements of Pennsylvania's SIP revision and the rationales for EPA's proposed actions are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving the maintenance plan and the 2002 base-year inventory for the Susquehanna County Area, submitted on December 17, 2007, as revisions to the Pennsylvania SIP. EPA is approving the maintenance plan and 2002 base-year inventory for the Susquehanna County Area because it meets the requirements of section 110(a)(1) of the CAA.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52. 02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 2, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving the maintenance plan and the 2002 base-year inventory for the Susquehanna County Area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 24, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. In § 52. 2020, the table in paragraph (e)(1) is amended by adding an entry for the 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for Susquehanna County at the end of the table to read as follows:

§ 52. 2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *				
8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory.	Susquehanna County	12/17/07	7/02/08. [Insert page number where the document begins].	

* * * * *

[FR Doc. E8–14878 Filed 7–1–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0180; FRL–8687–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for the Crawford County Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) submitted a SIP revision consisting of a maintenance plan that provides for continued attainment of the 8-hour ozone national ambient air quality standard (NAAQS) for at least 10 years after the April 30, 2004 designations, as well as a 2002 base-year inventory for the Crawford County Area. EPA is approving the maintenance plan and the 2002 base-year inventory for the Crawford County Area as revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: Effective Date: This final rule is effective on August 1, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2008–0180. All documents in the docket are listed in the *http://www.regulations.gov* website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environment Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 14, 2008 (73 FR 27791), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Pennsylvania's SIP revision that establishes a maintenance plan for the Crawford County Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after designation, and a 2002 base-year emissions inventory. The formal SIP revisions were submitted by PADEP on December 17, 2007. Other specific requirements of Pennsylvania's SIP revision and the rationales for EPA's proposed actions are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving the maintenance plan and the 2002 base-year inventory for the Crawford County Area, submitted on December 17, 2007, as revisions to the Pennsylvania SIP. EPA is approving the maintenance plan and 2002 base-year inventory for the Crawford County Area because it meets the requirements of section 110(a)(1) of the CAA.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52. 02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct

costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 2, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving the maintenance plan and the 2002 base-year inventory for the Crawford County Area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 24, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDed]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. In § 52. 2020, the table in paragraph (e)(1) is amended by adding an entry for the 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for Crawford County at the end of the table to read as follows:

§ 52.2020 Identification of plan.

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * * * *				
8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory.	Crawford County	12/17/07	7/02/08. [Insert page number where the document begins].	

* * * * *

[FR Doc. E8–14868 Filed 7–1–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0181; FRL–8686–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for the Somerset County Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) submitted a SIP revision consisting of a maintenance plan that provides for continued attainment of the 8-hour ozone national ambient air quality standard (NAAQS) for at least 10 years after the April 30, 2004 designations, as well as a 2002 base-year inventory for the Somerset County Area. EPA is approving the maintenance plan and the 2002 base-year inventory for the Somerset County Area as revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on August 1, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2008–0181. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.* , confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environment Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On May 14, 2008 (73 FR 27786), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Pennsylvania's SIP revision that establishes a maintenance plan for the Somerset County Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after designation, and a 2002 base-year emissions inventory. The formal SIP revisions were submitted by PADEP on December 17, 2007. Other specific requirements of Pennsylvania's SIP revision and the rationales for EPA's proposed actions are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving the maintenance plan and the 2002 base-year inventory for the Somerset County Area, submitted on December 17, 2007, as revisions to the Pennsylvania SIP. EPA is approving the maintenance plan and 2002 base-year inventory for the Somerset County Area because it meets the requirements of section 110(a)(1) of the CAA.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52. 02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 2, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving the maintenance plan and the 2002 base-year inventory for the Somerset County Area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 24, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDed]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. In § 52. 2020, the table in paragraph (e)(1) is amended by adding an entry for the 8–Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for Somerset County at the end of the table to read as follows:

§ 52. 2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * * * *				
8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory.	Somerset County	12/17/07	7/2/08. [Insert page number where the document begins].	

* * * * *

[FR Doc. E8–14867 Filed 7–1–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2007–0346; FRL–8369–4]

Bacillus thuringiensis Cry2Ab2 protein; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Cry2Ab2 protein in or on corn when used as plant–incorporated protectant in the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop. Monsanto Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting to amend the existing temporary tolerance(s) in 40 CFR 174.503 for the *Bacillus thuringiensis* Cry2Ab2 protein to establish a permanent exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Cry2Ab2 protein in or on all food commodities when used as a plant-incorporated protectant in all food commodities. This regulation eliminates the need to establish a maximum permissible level for residues of the *Bacillus thuringiensis* Cry2Ab2 insecticidal protein in or on the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop.

DATES: This regulation is effective July 2, 2008. Objections and requests for hearings must be received on or before September 2, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0346. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8077; e-mail address: *cerrelli.susanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 174 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0346 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 2, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2007–0346, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 1, 2007 (72 FR 42075-42077) (FRL–8129–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 6F7143) by Monsanto Company, 800 North Lindbergh Blvd. St. Louis, MO 63167. The petition requested that 40 CFR part 174 be amended by establishing an exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Cry2Ab2 protein in or on all food commodities when used as plant–incorporated protectant in all food commodities. This notice included a summary of the petition prepared by the petitioner Monsanto Company. One commenter objected to the petition, expressing concerns about Monsanto obtaining an exemption from tolerance and potential harmful effects. The Agency understands the commenter's concerns about potential effects of this particular plant-incorporated protectant to humans and the environment. Pursuant to its authority under the FFDCA, EPA conducted a comprehensive assessment of Cry2Ab2 protein, including a review of acute oral toxicity data on Cry2Ab2 protein, amino acid sequence comparisons to known toxins and allergens, as well as data demonstrating that Cry2Ab2 proteins are rapidly degraded by gastric fluid *in vitro*, are not glycosylated, and are present in low levels in the tissues expressing the plant-incorporated protectant. Based on these data, the Agency has concluded that there is a reasonable certainty that no harm will result from dietary exposure to residues of Cry1Ab2 protein in the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop, when used as a plant-incorporated protectant. Thus, under the standard in FFDCA section 408(b)(2), a tolerance exemption is appropriate.

In taking this action, EPA, pursuant to its authority under section 408(d)(4)(A)(i) of the FFDCA, is issuing a final regulation that varies from the regulation sought by Monsanto in its petition. Specifically, instead of issuing a tolerance exemption that covers residues of the subject plant-incorporated protectant in all food commodities, EPA is issuing a tolerance exemption that covers residues of the subject plant-incorporated protectant in those commodities in which it will be used as a plant-incorporated protectant — in this case, the food and feed commodities of corn; corn,field; corn, sweet; and corn, pop. In this way, the tolerance exemption is coextensive with the registered uses for this particular plant-incorporated protectant. In addition, instead of amending the existing temporary tolerance exemption in 40 CFR 174.503 for the *Bacillus thuringiensis* Cry2Ab2 protein in corn by making it a permanent exemption, EPA instead is opting to amend the existing permanent tolerance exemption in 40 CFR 174.519 for the *Bacillus thuringiensis* Cry2Ab2 protein in cotton by adding to that provision the permanent tolerance exemption for *Bacillus thuringiensis* Cry2Ab2 protein in corn established by this final rule.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . . '' Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues '' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Mammalian toxicity and allergenicity assessment. Monsanto has submitted acute oral toxicity data demonstrating the lack of mammalian toxicity at high levels of exposure to the pure Cry2Ab2 protein. These data demonstrate the safety of the product at a level well above maximum possible exposure levels that are reasonably anticipated in corn using Cry2Ab2 expression values found in corn. Basing this conclusion on acute oral toxicity data without requiring further toxicity testing and residue data is similar to the Agency position regarding toxicity testing and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived (See 40 CFR 158.2130). For microbial products, further toxicity testing (Tiers II and III) and residue data are only triggered when significant adverse acute effects occur in toxicological studies, such as the acute oral toxicity study, to verify the observed adverse effects and clarify the source of these effects.

An acute oral toxicity study in mice (Master Record Identification Number 44966602) indicated that Cry2Ab2 is non-toxic to humans. The Cry2Ab2 protein does not appear to cause any significant adverse effects at an exposure level of up to 1,000 milligrams/kilograms (mg/kg) bodyweight.

When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., *et al.*, ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' Regulatory Toxicology and Pharmacology 15, 3-9 (1992)). Therefore, since no acute effects were shown to be caused by Cry2Ab2, even at relatively high dose levels, the Cry2Ab2 protein is not considered toxic. Further, amino acid sequence comparisons between the Cry2Ab2 protein and known toxic proteins in protein databases showed no similarities that would raise a safety concern. In addition, the Cry2Ab2 protein was shown to be substantially degraded by heat when examined by immunoassay. This instability to heat would also lessen the potential dietary exposure to intact Cry2Ab2 protein in cooked or processed foods. These biochemical features, along with the lack of adverse results in the acute oral toxicity test support the conclusion that

there is a reasonable certainty no harm from toxicity will result from dietary exposure to residues of Cry2Ab2 in or on the identified corn commodities.

Since Cry2Ab2 is a protein, allergenic potential was also considered. Currently, no definitive tests for determining the allergenic potential of novel proteins exist. Therefore, EPA uses a weight-of- evidence approach where the following factors are considered: Source of the trait; amino acid sequence comparison with known allergens; and biochemical properties of the protein, including *in vitro* digestibility in simulated gastric fluid (SGF), and glycosylation. This approach is consistent with the approach outlined in the Annex to the Codex Alimentarius, ''Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants.'' The allergenicity assessment for Cry2Ab2 follows:

■ 1. *Source of the trait. Bacillus thuringiensis* is not considered to be a source of allergenic proteins.

2. *Amino acid sequence*. A comparison of the amino acid sequence of Cry2Ab2 with known allergens showed no significant overall sequence similarity (using the CODEX similarity standard of 35% amino acid similarity in any 80 amino acid window) or identity at the level of eight contiguous amino acid residues, indicting a lack of potential linear epitopes found in known food allergens.

3. *Digestibility*. The Cry2Ab2 protein was digested within 15 seconds in simulated gastric fluid containing pepsin. The rapid degradation of Cry2Ab2 in the gastric environment suggests little possible exposure to intact protein in the intestinal lumen, where sensitization to food allergens occurs.

4. *Glycosylation*. Cry2Ab2 expressed in corn was shown not to be glycosylated.

5. *Conclusion*. Considering all of the available information, EPA has concluded that the potential for Cry2Ab2 to be a food allergen is minimal. The information on the safety of pure Cry2Ab2 protein provides adequate justification to address possible exposures in all corn crops.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for residues of the plant-incorporated protectant, and exposure from non-occupational sources. Although the allergenicity assessment focuses on its potential to be a food allergen, the data (comparing amino acid sequence similarity to allergens, including aeroallergens) also indicate a low potential for Cry2Ab2 to be an inhalation allergen. Exposure via residential or lawn use to infants and children is also not expected because the use sites for the Cry2Ab2 protein are agricultural. Oral exposure, at very low levels, may occur from ingestion of processed corn products and, theoretically, drinking water. However, oral toxicity testing done at dose levels several orders of magnitude above the plant expression level showed no adverse effects.

Food. The data submitted and cited regarding potential health effects for the Cry2Ab2 protein includes the characterization of the expressed Cry2Ab2 protein in corn, as well as the acute oral toxicity study, amino acid sequence comparisons to known allergens and toxins, and the *in vitro* digestibility of the protein. The results of these studies were used to evaluate human risk, and the validity, completeness, and reliability of the available data from the studies were also considered.

Adequate information was submitted to show that the Cry2Ab2 test material derived from microbial culture was biochemically and functionally equivalent to the protein in the plant. Microbially produced protein was used in the safety studies so that sufficient material for testing was available.

The acute oral toxicity data submitted support the prediction that the Cry2Ab2 protein would be non-toxic to humans. As mentioned in this unit, when proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., *et al.*, ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' Regulatory Toxicology and Pharmacology 15, 3-9 (1992)). Since no treatment-related adverse effects were shown to be caused by the Cry2Ab2 protein even at high dose levels (e.g., 1,450 mg/kg bodyweight), the Cry2Ab2 protein is not considered toxic. Basing this conclusion on acute oral toxicity data without requiring further toxicity testing and residue data is similar to the Agency's position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived (See 40 CFR 158.740(b)(2)(i)). For microbial products, further toxicity testing and residue data are only triggered when significant adverse effects are seen in toxicological studies, such as the acute oral toxicity study. Further studies verify the observed adverse effects and clarify the source of those effects.

Residue chemistry data were not required for a human health effects assessment of the subject plant-incorporated protectant because of the lack of mammalian toxicity. Nonetheless, data submitted demonstrated low levels of the Cry2Ab2 protein in corn tissues (1-3 ppm in grain, 20-90 ppm in forage or leaf tissue), indicating a low potential for dietary exposure.

Since Cry2Ab2 is a protein, potential allergenicity is also considered as part of the toxicity assessment. Considering all of the available information:

1. Cry2Ab2 originates from a non-allergenic source;

2. Cry2Ab2 has no sequence similarities with known allergens;

3. Cry2Ab2 is not glycosylated; and

4. Cry2Ab2 is rapidly digested in simulated gastric fluid; EPA has concluded that the potential for Cry2Ab2 to be a food allergen is minimal.

Neither available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers, including infants and children) nor safety factors that are generally recognized as appropriate for the use of animal experimentation data were evaluated. The lack of mammalian toxicity at high levels of exposure to the Cry2Ab2 protein, as well as the minimal potential to be a food allergen, demonstrate the safety of the product at levels well above possible maximum exposure levels anticipated in the crop.

The genetic material necessary for the production of the plant-incorporated protectant active ingredient include the nucleic acids (DNA, RNA) that encode these proteins and regulatory regions. The genetic material (DNA, RNA) necessary for the production of the Cry2Ab2 protein has been exempted

from the requirement of a tolerance under 40 CFR 174.507 (Nucleic acids that are part of a plant-incorporated protectant; exemption from the requirement of a tolerance).

B. Other Non-Occupational Exposure

Dermal and inhalation exposure. Exposure via the skin or inhalation is not likely since the plant-incorporated protectant is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. In addition, even if exposure can occur through inhalation, the potential for Cry2Ab2 to be an allergen is minimal as discussed in Unit.III.

V. Cumulative Effects

Pursuant to section 408(b)(2)(D)(v) of FFDCA, EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity from the plant-incorporated protectant, we conclude that there are no cumulative effects for the Cry2Ab2 protein.

VI. Determination of Safety for U.S. Population, Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, section 408(b)(2)(C) of FFDCA also provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children.

In this instance, based on all the available information, the Agency concludes that there is a finding of no toxicity for the Cry2Ab2 protein. Thus, there are no threshold effects of concern and, as a result, the provision requiring an additional tenfold margin of safety does not apply. Further, the considerations of consumption patterns, special susceptibility, and cumulative effects do not apply.

VII. Other Considerations

A. Endocrine Disruptors

The pesticidal active ingredient is a protein, derived from a source that is not known to exert an influence on the endocrine system. Therefore, the Agency is not requiring information on the endocrine effects of this plant-incorporated protectant at this time.

B. Analytical Methods

A protocol for an enzyme-linked immunosorbent assay for the detection and quantification of Cry2Ab2 in corn tissue has been submitted, and a commercially available qualitative immunochromatographic test strip was shown to detect the Cry2Ab2 protein in corn tissues.

C. Codex Maximum Residue Level

No Codex maximum residue level exists for the plant-incorporated protectant *Bacillus thuringiensis* Cry2Ab2.

VIII. Conclusions

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of the Cry2Ab2 protein in or on all food and feed commodities of corn; corn, field; corn, sweet; and corn, pop. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed, nor any indication of allergenicity potential for the plant-incorporated protectant.

IX. Statutory and Executive Order Reviews

This final rule establishes a tolerance exemption under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the

Federal Register. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 10, 2008.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 174—[AMENDed]

■ 1. The authority citation for part 174 continues to read as follows:

Authority: 7 U.S.C. 136-136y; 21 U.S.C. 346a and 371.

§ 174.503 [Removed]

■ 2. Section 174.503 is removed.

■ 3. Section 174.519 is revised to read as follows:

§ 174.519 Bacillus thuringiensis Cry2Ab2 protein in corn and cotton; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Cry2Ab2 protein in or on corn or cotton are exempt from the requirement of a tolerance when used as a plant–incorporated protectant in the food and feed commodities of corn; corn, field; corn, sweet; corn, pop; and cotton seed, cotton oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton gin byproducts.

[FR Doc. E8–14794 Filed 7–1–08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0192; FRL–8364–1]

Atrazine; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of atrazine in or on vegetable, leafy, except brassica, group 4. Syngenta Crop Protection Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 2, 2008. Objections and requests for hearings must be received on or before September 2, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0192. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Hope Johnson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5410; e-mail address: *johnson.hope@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0192 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before September 2, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2006–0192, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200

Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of August 15, 2006 (71 FR 46911) (FRL–8064–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6F7022) by Syngenta Crop Protection Inc., P.O. Box 18300, Greensboro, NC 27409. The petition requested that 40 CFR 180.220 be amended by establishing tolerances for residues of the herbicide atrazine, 2-chloro-4-ethylamino-6-isopropylamino-s-triazine, in or on leafy vegetables (excluding brassica) at 0.60 parts per million (ppm). That notice referenced a summary of the petition prepared by Syngenta Crop Protection Inc., the registrant, which is available to the public in the docket, *http://www.regulations.gov*. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has concluded that a tolerance level of 0.25 ppm shall be established for the raw agricultural commodities vegetable, leafy, except brassica, group 4. The reason for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of atrazine on vegetable, leafy, except brassica, group 4 at 0.25 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance were discussed in the Notice published in the **Federal Register** of June 21, 2006 (71 FR 35664) (FRL–8065–4) which made available the cumulative risk assessment for the chlorinated triazine pesticides, which include atrazine. The Agency concluded that the cumulative risks associated with the chlorinated triazine pesticides are below the Agency's level of concern. In the risk assessment for the inadvertant residues of atrazine on leafy vegetables, EPA concluded that the food related exposures to atrazine from leafy vegetables are insignificant. Thus, the atrazine-related risks calculated in the triazine cumulative risk assessment will be unchanged by this action. The triazine cumulative risk assessment can be accessed at *http://www.regulations.gov* under docket identification (ID) number EPA–HQ–OPP–2005–0481. Based on the risk assessment discussed in the above notice, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to atrazine residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Syngenta Analytical Methods AG–601, AG–484, AG–564 (plants), Method III in Pam Vol. II (milk) and Method I in PAM Vol. II (meat)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

The Codex Alimentarius Commission has not proposed or established maximum residue limits (MRLs) for residues of atrazine in or on agricultural commodities.

C. Response to Comments

Several comments were received from a private citizen objecting to pesticide body load, animal testing, establishing tolerances, and pesticide residues. The Agency has received these same comments from this commenter on numerous previous occasions. Refer to the following **Federal Register** cites: 70 FR 37686, June 30, 2005; 70 FR 1354, January 7, 2005; 69 FR 63096–63098 October 29, 2004; for the Agency's response to these objections.

D. Revisions to Petitioned-For Tolerances

Based upon review of the data supporting the petition, EPA has concluded that a tolerance level of 0.25 ppm on leafy vegetables (excluding brassica) is more appropriate than 0.60 ppm as it covers the maximum residue level found in the study submitted, while retaining the capability of detecting instances of misuse. The Agency is revising the raw agricultural commodities nomenclature for ''leafy vegetables (excluding brassica)'' to ''vegetable, leafy, except brassica, group 4.''

V. Conclusion

Therefore, tolerances are established for residues of atrazine, 2-chloro-4-ethylamino-6-isopropylamino-s-triazine, in or on vegetable, leafy, except brassica, group 4 at 0.25 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order

12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 23, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDed]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.220 is amended by adding text to paragraph (d) to read as follows:

§ 180.220 Atrazine; tolerances for residues.

* * * * *

(d) *Indirect or inadvertant residues.* Tolerances are established for indirect or inadvertant residues of atrazine, 2-chloro-4-ethylamino-6-isopropylamino-s-triazine, in or on the following raw agricultural commodity when present therein as a result of application of atrazine to the growing crops in paragraph (a) of this section:

Commodity	Parts per million
Vegetable, leafy, except brassica, group 4	0.25

[FR Doc. E8–15010 Filed 7–1–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–1024; FRL–8368–1]

Residues of Quaternany Ammonium Compounds, Didecyl Dimethyl Ammonium Carbonate and Didecyl Dimethyl Ammonium Bicarbonate; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the quaternany ammonium compounds, didecyl dimethyl ammonium carbonate and didecyl dimethyl ammonium bicarbonate (hereinafter cited jointly as DDACB), on food-contact surfaces when applied/used in public eating places, dairy processing equipment, and/or food processing equipment and utensils. Lonza, Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting to establish concentration limits of DDACB in end-use products eligible for the exemption from the requirement of a tolerance. As amended, the regulation will exempt solutions from the requirement of tolerance residues resulting from contact with surfaces treated with solutions where the end-use concentration of DDACB does not exceed 240 parts per million (ppm).

DATES: This regulation is effective July 2, 2008. Objections and requests for hearings must be received on or before September 2, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–1024. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Velma Noble, Antimicrobials Division (7510P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone

number: (703) 308–6233; e-mail address: *noble.velma@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are dairy cattle milk producer, food manufacturer, or beverage manufacturer. Potentially affected entities may include, but are not limited to:

- Dairy Cattle Milk Production (NAICS code 11212).
- Food manufacturing (NAICS code 311).
- Beverage Manufacturing (NAICS code 3121).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–1024 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 2, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–1024, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Exemption

In the **Federal Register** of November 28, 2007 (72 FR 67300) (FRL–8141–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 6F7131) by Lonza, Inc., 90 Boroline Rd., Allendale, NJ 07401. The petition requested that 40 CFR 180.190(a) be amended by establishing concentration limits for DDACB in end-use solutions eligible for tolerance exemption. That notice referenced a summary of the petition prepared by Lonza, Inc., the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue ....''

Consistent with section 408(c)(2)(A) of FFDCA, and the factors specified in section 408(c)(2)(B) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for exemption from the requirement for a tolerance for residues of DDACB on food-contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils. EPA's assessment of exposures and risks associated with establishing the exemption from the requirement for a tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by DDACB as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

DDACB is a part of the aliphatic alkyl quaternaries chemical case which is comprised of six compounds that are structurally similar quaternary ammonium compounds (quats). This group of chemicals are characterized by having a positively charged nitrogen covalently bonded to two alkyl group substituents (at least one C^8 or longer)

and two methyl substituents. In finished form, these quats are salts with positively charged nitrogen (cation) balanced by a negatively charged molecule (anion). The anion for the quats in this group are chlorine, carbonate, bicarbonate, or bromine.

In 1988, EPA issued PR Notice 88–2 outlining ''Clustering of Quaternary Ammonium Compounds.'' In that PR Notice, quats were clustered into 4 groups as follows:

Group I: The alkyl or hydroxyalkyl (straight chain) substituted quats; otherwise referred to as the aliphatic alkyl quaternaries.

Group II: The non-halogenated benzyl substituted quats (including alkyl benzyl, dodecyhlbenzyl, hydroxybenzyl, hydroxyethylbenzyl, and naphylmethyl).

Group III: The di- and tri-chlorobenzyl substituted quats.

Group IV: Quats with unusual substitutes (charged heterocyclic compounds).

In all types of aliphatic alkyl ammonium chloride quaternaries, it is the positive entity (quaternized nitrogen containing the aliphatic alkyl and/or aromatic alkyl groups) that is of relevance from toxicology and exposure perspectives. The negative part of the aliphatic alkyl ammonium chloride quaternaries (counter ion) is relatively non-toxic entities (bicarbonate, carbonate, chloride). Aliphatic alkyl ammonium chloride quaternaries were originally formulated with chloride as the negative or the counter ion. However, one negative ion in the aliphatic alkyl ammonium chloride quaternaries can be replaced with another without disrupting the structural integrity of the chemical (i.e., quaternized nitrogen) and thereby without having a significant effect on toxicity. Accordingly, the toxicological profiles of the aliphatic alkyl ammonium chloride quaternaries are very similar and a toxicological assessment of any of the aliphatic alkyl ammonium chloride quaternaries is representative of the group. Didecyl dimethyl ammonium chloride (DDAC), was chosen as the representative chemical for aliphatic alkyl ammonium chloride quaternaries because it was registered first. On this basis, the toxicology database for DDAC is accepted as representative of the hazard for this class of quaternary ammonium compounds.

The aliphatic alkyl ammonium chloride quaternaries are corrosive, highly irritating to the eye and skin, with moderate acute toxicity by oral, dermal, and inhalation routes of exposure. These chemicals are classified as ''not likely'' to be a human carcinogen based on negative carcinogenicity studies in rats and mice feeding studies using doses above limit dose. There is no evidence of these chemicals being associated with increased susceptibility to developmental toxicity or reproductive toxicity based on two developmental toxicity studies and a 2–generation reproductive study. Lastly, they are negative for mutagenicity and neurotoxicity.

Specific information on the studies received and the nature of the toxic effects caused by aliphatic alkyl quaternaries can be found at *http://www.regulations.gov*. Docket ID Number EPA–HQ–OPP–2006–0338, Didecyl Dimethyl Ammonium Chloride (DDAC)—Report of Antimicrobials Division Toxicity Endpoint Committee (ADTC) and the Hazard Identification Assessment Review Committee (HIARC).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. The Level of Concern (LOC) is a reference value expressed as either a reference dose/population adjusted dose (RfD/PAD) or margin of exposure (MOE). Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of a cancer occurrence greater than that expected in a lifetime. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

The Agency's LOC for aliphatic alkyl ammonium chloride quaternaries' inhalation and oral exposures is 100 (i.e., a MOE less than 100 exceeds the Agency's level of concern). The LOC is based on an UF of 10x for interspecies extrapolation and 10x UF for intraspecies extrapolation. For dermal exposures, irritation as the effect was selected for the short-term endpoint and a reduced MOE was used to characterize the risk. The use of irritation as a toxic endpoint for assessment of dermal risk is appropriate in this case, as dermal exposure that results in primarily an irritation response is considered a self-limiting type of exposure that is not expected to last for any length of time, and variability in the response is not expected to be as great as systemic toxic responses. For aliphatic alkyl quaternaries, the MOE for short-term dermal risk is reduced to a total factor of 10x (3x for interspecies extrapolation, 3x for intraspecies variation).

A summary of the toxicological endpoints for aliphatic alkyl quaternaries used for human risk assessment is shown in Table 1 of this unit. Specific information on the studies received such as the NOAEL and the LOAEL from the toxicity studies caused by aliphatic alkyl quaternaries can be found at *http://www.regulations.gov*. Docket ID Number EPA–HQ–OPP–2006–0338, Didecyl Dimethyl Ammonium Chloride (DDBAC)—Report of Antimicrobials Division Toxicity Endpoint Committee (ADTC) and the Hazard Identification Assessment Review Committee (HIARC).

TABLE 1. —SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ALIPHATIC ALKYL AMMONIUM CHLORIDE QUATERNARIES FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (Females 13–50 years of age)	NOAEL = 10 milligrams/kilograms/day (mg/kg/day) UF_A = 10x UF_H = 10 x FQPA SF = 1x	Acute RfD = 0.1 mg/kg/day aPAD = 0.1 mg/kg/day	Prenatal Developmental Toxicity—Rat (MRID 41886701) LOAEL = 20 mg/kg/day based on increased incidence of skeletal variations.
Chronic dietary (All populations)	NOAEL= 10 mg/kg/day UF_A = 10x UF_H = 10 x FQPA SF = 1x	Chronic RfD =0.1 mg/kg/day cPAD = 0.1 mg/kg/day	Chronic Toxicity—Dog (MRID 41970401) LOAEL = 20 mg/kg/day based on increased incidence of clinical signs in males and females and decreased total cholesterol levels in females.
Incidental oral short-term (1 to 30 days)	NOAEL= 10 mg/kg/day UF_A = 10x UF_H = 10 x FQPA SF = 1x	LOC for MOE = 100	Prenatal Developmental Toxicity—Rat (MRID 41886701) LOAEL = 20 mg/kg/day based on increased incidence of skeletal variations.
Incidental oral intermediate-term (1 to 6 months)	NOAEL= 10 mg/kg/day UF_A= 10x. UF_H= 10x FQPA SF =1x	LOC for MOE = 100	Chronic Toxicity—Dog (MRID 41970401) LOAEL = 20 mg/kg/day based on increased incidence of clinical signs in males and females and decreased total cholesterol levels in females
Dermal short-term (formulated product 0.13% a.i.)	No endpoint identified. No dermal or systemic effects identified in the 21–day dermal toxicity study (MRID 45656601) up to and including the limit dose of 1,000 mg/kg/day.		
Dermal short-term (1 to 6 months)	Dermal study NOAEL= 2 mg/kg/day ((8 micrograms (ug)/centimeters $(cm)^2$)[a] %when appropriate) UF_A = 3 x UF_H = 3x FQPA SF = 1x	LOC for MOE = 10	90–Day Dermal Toxicity—Rat (MRID 41305901) LOAEL = 6 mg/kg/day based on increased clinical and gross findings (erythema, edema, exfoliation, excoriation, and ulceration.
Dermal intermediate- and Long-term.	No endpoint identified.		
Inhalation short-term (1 to 30 days)	Oral study NOAEL[b]= 10 mg/kg/day (inhalation absorption rate = 100%) UF_A = 10 x UF_H = 10 x FQPA SF = 1x	LOC for MOE = 100	Prenatal Developmental Toxicity (MRID 41886701) LOAEL = 20 mg/kg/day based on increased incidence of skeletal variations.
Inhalation (1 to 6 months)	Oral) study NOAEL[b] = 10 mg/kg/day (inhalation absorption rate = 100%) UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Chronic Toxicity Study—Dog (MRID 41970401) LOAEL = 20 mg/kg/day based on increased incidence of clinical signs males and females and decreased total cholesterol levels in females.

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term risk assessment. UF_{DB} = to account for the absence of data or other data deficiency. FQPA SF = FQPA Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

[a] Short-term dermal endpoint = (2 mg/kg rat x 0.2 kg rat x 1,000 ug/mg)/50 cm^2 area of rat dosed = 8 ug/cm^2.

[b] An additional UF of 10x is used for route extrapolation from an oral endpoint to determine, if a confirmatory study is warranted.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to DDACB, EPA considered exposure under the petitioned-for exemption as well as all existing aliphatic alkyl quaternaries exemptions or tolerances in (40 CFR 180.940(a)). EPA assessed dietary exposures from DDACB in food as follows:

Aliphatic alkyl quaternaries are to be used as a sanitizer on appliances, beverage bottling, counter tops, food packaging, refrigerators, tables, and utensils. The use of these actives in antimicrobial products for use on food

or feed-contact surfaces, agricultural commodities, and application to food-grade eggs may result in pesticide residues in human food. Residues from treated surfaces, such as appliances, countertops, equipment, and utensils can migrate to food coming into contact with the treated and rinsed surfaces and can be ingested by humans.

The Agency assessed acute and chronic dietary exposures from the use of DDACB as a disinfectant and food-contact sanitizer on utensils, countertops, and in food/beverage processing facilities. The assessment calculated the Daily Dietary Dose (DDD) and the Estimated Daily Intake (EDI) using modified Food and Drug Administration (FDA) methodologies for utensils and Indirect Dietary Residential Exposure Model software (IDREAM) for countertops. IDREAM incorporates consumption data from United States Department of Agriculture (USDA) Continuing Survey of Food Intakes by Individuals (CSFII) for 1994–1996 and 1998. The USDA CSFII 1994–1996 and 1998 data are based on the reported consumption of more than 20,000 individuals over two non-consecutive survey days.

The EDI calculations presented in this assessment for treated indirect dietary exposures resulting from sanitizing utensils assumed that food would contact 4,000 cm^2 (which represents contact with treated china, glass, and silverware used by an individual who regularly eats three meals per day at an institutional or public facility) and that the residual solution remaining on the surface or pesticide migration fraction is 1 mg/cm^2 of treated area. The body weights used for this assessment were 70 kg for an adult male, 60 kg for an adult woman, and 10 kg for an infant. Based on data provided in a new residue study, Transferability Equivalence among Quats and Measured Food Surrogate Transfer Efficiency (MRID 46870703), a conservative transfer rate of 43% was used to demonstrate the amount of residues on the surface that will be transferred to food and subsequently ingested. The maximum application rate for DDACB on utensils is 0.0020 lbs active ingredient (a.i) per gallon of treatment solution.

There are two levels of refinement for assessing dietary exposure to antimicrobial products used on countertops. The three dimensional approach, Tier 2, was utilized for this assessment. This conservative approach uses food consumption and preparation patterns as well as data and assumptions that are not chemical specific. Food ingredients are separated into nine categories based on food preparation, food physical properties, and potential, or likelihood of contact with treated countertops. The nine food categories are liquids, fruit, bread, cheese, vegetable, meat, purees (e.g., oatmeal, pudding), pieces (foods normally consumed in small pieces), and powders (foods normally used in powder/granular forms). Assumed countertop residues are converted to estimated residues contacting the countertops using a translation factor for each food category, and default residue transfer efficiency for a representative food. Therefore, IDREAM combines the estimated countertop residues for surface treatment products, CSFII consumption data, food-specific conversion factors that relate the surface area contacting a countertop with corresponding weight of the food item, and the transfer efficiency of residues from countertops to food. Conservative assumptions for these analyses include: All disinfectants registered to disinfect kitchen countertops are included; all foods are prepared on those countertops; all prepared foods will come in contact with treated countertops at the maximum application rate and transfer residues do not diminish over time (i.e., residue reduction will not occur from cooking or preparation processes); there is a 100% likelihood of contact to account for both commercial and residential scenarios: All commercial and households use the same active ingredients; all foods are prepared and consumed.

When assessing the food bottling/packaging use, EPA assumed a 100% transfer rate because the food is potentially in contact with the treated surfaces for very long periods of time. The maximum application rate for DDACB for bottling/packing of food is 0.0020 lbs a.i. per gallon of treatment solution. EDI values were calculated using an approach similar to that used for treated food utensils. Exposure was assumed to occur through the ingestion of three food products that might be packaged with treated material: Beverages (alcoholic and non-alcoholic), egg products, and milk. A calorie intake modification factor of 0.64 was applied to the EDI for a child to account for the differences between intake values among children and adults. The calculated percent of an aPAD and a cPAD do not exceed 100% and therefore are not of a concern.

2. *Dietary exposure from drinking water*. DDACB outdoor uses are as an algaecide in wood preservative treatment and a slimicide in secondary oil field uses. The oil field uses are considered to be contained. The other uses are not expected to significantly contaminate drinking water sources. Therefore, the DDACB contributions for drinking water exposure are considered to be negligible and are not quantified.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

DDACB is currently registered for the following residential non-dietary sites: Homes and day-care nurseries. EPA assessed residential exposure using the following assumptions:

Residential exposure may occur during the application as well as post application of DDACB to indoor hard surfaces (e.g., mopping, trigger pump sprays, wiping). The residential handler scenarios were assessed to determine dermal and inhalation exposures. Residential post application scenarios such as children exposure to treated toys and floors were also assessed to determine dermal and incidental oral exposures. Surrogate dermal, inhalation, and incidental oral unit exposure values were estimated using Pesticide Handler Exposure Database (PHED) data and the Chemical Manufactures Association Antimicrobial Exposure Assessment Study (EPA, 1999). Note that for this assessment, EPA assumed that residential users complete all elements of an application (mix/load/apply) without the use of personal protective equipment.

The duration for most residential exposures is believed to be best represented by the short-term duration (1 to 30 days). The short-term duration was chosen for this assessment because the residential handler and post-application scenarios are assumed to be performed on an episodic, not daily basis.

Specific information on the residential exposure assessment for DDACB can be found at *http://www.regulations.gov*. Docket ID Number EPA–HQ–OPP–2006–1024, Review of Petition to Amend 40 CFR 180.940 to add Didecyl Dimethyl Ammonium Carbonate/Bicarbonate.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other

substances that have a common mechanism of toxicity.''

EPA's risk assessment for the Group I Cluster is based on an assessment of the cumulative exposure to all aliphatic alkyl quaternary compounds. The individual exposure scenarios in the DDAC assessments (as well as the aggregate assessment in the Aliphatic Alkyl Quaternary (DDAC) Reregistration Eligibility Decision (RED)) were developed by assuming that a DDAC compound was used on 100% of the surfaces authorized on the label that could result in human exposure and summing the percent active ingredients on the labels for all of the aliphatic alkyl quaternary compounds when used in combination. Thus, because the risk assessment for DDAC accounts for exposures to all of the aliphatic alkyl quaternary compounds, there is no need for a separate cumulative risk assessment for those compounds. The Agency has not identified any other substances as sharing a common mode of toxicity with DDAC.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional (10x) tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10x when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA SF value based on the use of traditional UFs and/or FQPA SFs, as appropriate.

2. *Prenatal and postnatal sensitivity*. Given the data on the aliphatic alkyl ammonium chloride quaternaries, there is no evidence that DDACB result in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA SF to 1x. That decision is based on the following findings:

i. The toxicity database for aliphatic alkyl ammonium chloride quaternaries is complete.

ii. There is no indication that aliphatic alkyl ammonium chloride quaternaries are a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that aliphatic alkyl ammonium chloride quaternaries result in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. Although EPA may, in the future, refine exposure estimates for aliphatic alkyl ammonium chloride quaternaries based on more sophisticated modeling techniques, the current exposure assessment is based on a combination of conservative assumptions that is likely to overstate exposure from food to aliphatic alkyl ammonium chloride quaternaries.

E. Aggregate Risks and Determination of Safety

1. *Dietary risks from food and feed uses*. EPA compares the estimated dietary exposures to an aPAD and a cPAD, 0.1 mg/kg/day, which are the same value for DDACB. Generally, a dietary exposure estimate that is less than 100% of the aPAD or the cPAD does not exceed the Agency's LOC.

The antimicrobial indirect food use acute and chronic risk estimates from exposure to treated utensils and countertops are below the Agency's LOC. For adult males, the acute and chronic dietary exposure risk estimates are 5.9% for utensils and 1. 92% for countertops. The aPAD and cPAD for adult females of child bearing age (13–49), the highly exposed group, is 6.9% for utensils and 1. 79% for countertops. For children ages 1–2, the most highly exposed population subgroup, the acute and chronic dietary risk estimates are 41. 3% for utensils and 6.21% for countertops. Therefore, dietary exposure estimates are below the Agency's LOC for all population subgroups. The antimicrobial indirect food use chronic risk estimates from exposure to treated food packaging and beverage bottles are below the Agency's LOC. The percent cPAD values exceeded 100% and are not of concern.

Specific information on the dietary exposure assessment for DDACB can be found at *http://www.regulations.gov*. Docket ID Number EPA–HQ–2006–1024, Review of Petition to Amend 40 CFR 180.940 to add Didecyl Dimethyl Ammonium Carbonate/Bicarbonate.

2. *Non-occupational risk*. Aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Using the exposure assumptions described in this unit for other non-occupational exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs greater than or equal to 100 for the inhalation route of exposure and 10 for dermal exposure; therefore, are not of concern.

Based on the toxicological and exposure data discussed in this preamble, EPA concludes that DDACB will not pose a risk under reasonably foreseeable circumstances. Accordingly, EPA finds that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to DDACB residues.

IV. Other Considerations

An analytical method for food is not needed. Food-contact sanitizers are typically regulated by the State health departments to ensure that the food industry is using products in compliance with the regulations in 40 CFR 180.940. The end-use solution that is applied to the food-contact surface is analyzed not food items that may come into contact with treated surface. An analytical method is available to analyze the use dilution that is applied to food-contact surfaces. A titration method is used to determine the total amount of quaternary compound. If the use solution is a mixture of ADBAC and DDACB, then high pressure liquid chromatogram with ultraviolet visible (HPLC-UV) is used to determine the amount of ADBAC. The amount of DDACB is determined by calculating the difference between the total amount of quaternary compounds and ADBAC.

V. Conclusion

Therefore, an exemption is established for residues of DDACB, regulated chemical, on food-contact surfaces in public eating establishments, on dairy processing equipment, and food processing equipment and utensils.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply,*

Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Aliphatic alkyl quaternaries, Food-contact sanitizers, Pesticides and pests, Quaternary ammonium compounds, Reporting and recordkeeping requirements.

Dated: June 10, 2008.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDed]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.940 is amended by alphabetically adding an entry to the table in paragraph (a) to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

Pesticide Chemical	CAS Reg. No.	Limits
* *	* *	* * *
Quaternary ammonium compounds, didecyl dimethyl ammonium carbonate/didecyl dimethyl ammonium bicarbonate	148788–55–0/148812–654–1	When ready for use, the end-use concentration of these specific ammonium compounds is not to exceed 240 ppm of active quaternary ammonium compound.
* *	* *	* * *

* * * * *

[FR Doc. E8–14880 Filed 7–1–08; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 266

[FRL–8687–6]

RIN 2090–AA15

US Filter Recovery Services, Inc., Under Project XL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is withdrawing a final rule published on May 22, 2001 which modified the regulations under the Resource, Conservation and Recovery Act (RCRA) to enable the implementation of the US Filter Recovery Services, Inc. (USFRS) project that was developed under EPA's Project eXcellence in Leadership (Project XL) program. Project XL was a national pilot program that allowed state and local governments, businesses and federal facilities to work with EPA to develop more cost-effective ways of achieving environmental and public health protection. In exchange, EPA provided regulatory, policy or procedural flexibilities to conduct the pilot experiments.

DATES: The final rule is effective August 1, 2008.

FOR FURTHER INFORMATION CONTACT: Sandra Panetta, Mail Code 1870T, U.S. Environmental Protection Agency, Office of Policy, Economics and Innovation, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Ms. Panetta's telephone number is (202) 566–2184 and her e-mail address is *panetta.sandra@epa.gov*. Further information on today's action may also be obtained on the Internet at *http://*

www.epa.gov/projectxl/usfilter/index.htm.

SUPPLEMENTARY INFORMATION: EPA is withdrawing the final rule which published on May 22, 2001 (66 FR 28066) in response to USFRS's decision not to go forward with the XL project and the Minnesota Pollution Control Agency's (MPCA) decision not to promulgate an enabling revision to USFRS's permit. EPA provided USFRS with the regulatory flexibility to carry out a pilot project involving the use, storage and collection of ion exchange canisters for interested and approved USFRS customers under Project XL. The final rule was to remain in effect until 5 years from the date that MPCA revised USFRS's permit incorporating the changes required by the rule. Following the publication of the final rule, USFRS changed ownership. The new owners have chosen not to go forward with the XL project and therefore the project terminated by default under the change of ownership clause in the site-specific rule. MPCA did not initiate the required changes to USFRS's permit.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA is withdrawing a rule that can no longer be implemented. The company changed ownership and the project terminated by default because the new owners did not wish to continue the project. The rule no longer applies to the company and removal of the rule has no legal effect. Notice and public procedure would serve no useful purpose and is thus unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* because it is withdrawing a rule that was not implemented and does not impose any new requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

Today's final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because it withdraws a rule that applied to only one facility and does not impose any new requirements. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute [see **SUPPLEMENTARY INFORMATION** section], it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. (**Note:** The term ''enforceable duty'' does not include duties and conditions in voluntary federal contracts for goods and services.) Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute [see **SUPPLEMENTARY INFORMATION** section], it is not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in

the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule withdraws a rule that was specific to one facility. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. This final rule withdraws a rule that was not implemented. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: ''Protection of Children From Environmental Health Risks and Safety Risks''

(62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule applies to one facility and withdraws a rule that was not implemented.

K. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because it is a rule of particular applicability and does not impose any new requirements.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 266

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: June 26, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, parts 261 and 266 of chapter I of title 40 of the Code of Federal Regulations are amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 2. Section 261. 6 is amended by revising paragraph (a)(2) introductory text and removing paragraph (a)(2)(v) to read as follows:

§ 261. 6 Requirements for recyclable materials.

(a) * * *

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under subparts C through N of part 266 of this chapter and all applicable provisions in parts 270 and 124 of this chapter:

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 3. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

■ 4. Subpart O is removed.

[FR Doc. E8–15005 Filed 7–1–08; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 43

[WC Docket No. 07–38; FCC 08–148]

Development of Nationwide Broadband Data To Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice Over Internet Protocol (VoIP) Subscribership

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the Order on Reconsideration (Order), the Federal Communications Commission (Commission) amends the FCC Form 477 data collection to collect additional data on broadband service subscriptions. The Commission modifies Form 477 to require broadband providers to report the percentage of broadband connections in service that are residential.

DATES: The requirements in this document contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Alan Feldman, Wireline Competition Bureau, Industry Analysis and Technology Division, (202) 418–0940.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in WC Docket No. 07–38, adopted on June 11, 2008, and released on June 12, 2008. The complete text of this Order on Reconsideration is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at *http://www.fcc.gov.* Alternative formats are available for persons with disabilities by contacting the Consumer and Governmental Affairs Bureau, at (202) 418–0531, TTY (202) 418–7365, or at *fcc504@fcc.gov.* The complete text of the decision may be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc., Room CY–B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, or e-mail at *fcc@bcpiweb.com.*

Synopsis of Order on Reconsideration

1. On June 12, 2008, the Commission released *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership,* WC Docket No. 07–38, Report and Order and Further Notice of Proposed Rulemaking, FCC 08–89 (*Form 477 Order*) (published elsewhere in this issue). Pursuant to section 1. 108 of the Commission's rules, 47 CFR 1. 108, the Commission reconsiders on its own motion the reporting requirements of Form 477 as adopted by the *Form 477 Order.* In particular, the Commission expands the *Form 477 Order's* broadband connecting reporting requirement to also require reporting of the percentage of residential broadband connections.

2. While comments in the record for the *Form 477 Order* show support for distinguishing residential services from business services, the Commission maintained the pre-existing requirement to report the percentage of residential broadband connections at the state level. On May 13, 2008, after the Commission adopted the *Form 477 Order,* representatives from AT&T and Free Press met with the Commission to discuss the feasibility of extending the existing requirement that providers report state-wide percentages of residential lines to the Census Tract level. These parties proposed an approach that, subject to certain assumptions, would enable reporting of the percentage of residential broadband connections at the Census Tract level. The Commission finds that proposed approach reasonable, and therefore adopts such a requirement, as discussed below.

3. On reconsideration, the Commission concludes that extending the existing residential percentage reporting requirement will improve its understanding of the scope of broadband deployment and will assist the Commission's ongoing efforts to foster increased deployment of broadband services to residential customers in accordance with the Commission's obligation under section 706 of the Telecommunications Act of 1996, to an extent that outweighs the cost to providers. The Commission therefore requires wired, terrestrial fixed wireless, and satellite broadband service providers to report, for each Census Tract and each speed tier in which the provider offers service, the number of subscribers and the percentage of subscribers that are residential. For terrestrial mobile wireless broadband service providers, which only report broadband connection at the state level under the *Form 477 Order* as adopted, the Commission does not modify the obligation for such providers to report percentage of residential broadband connections at the state level. As in the *Form 477 Order,* the Commission finds that granting a blanket exemption to small carriers would undercut the benefits of the revised information collection by depriving the Commission and other parties of adequate information on broadband deployment and adoption in rural, unserved, and underserved areas of the nation, the areas where additional information is most needed and would be likely to have the greatest impact. Additionally, the Commission notes that all Form 477 filers must currently submit, for each state in which they provide service, the percentage of their broadband subscribers that are residential. The Commission concludes that any incremental burden associated with providing this information on the Census Tract basis is outweighed by the utility of the data the Commission will obtain. The Commission thus applies the revised requirement to all broadband service providers, regardless of size. However, we note that the *Form 477 Order* created an alternative form of reporting this information which we retain but modify slightly here. See *Form 477 Order,* paras. 15, 32. Upon a showing of significant hardship, reporting entities may report a list of service addresses or GIS coordinates of service, along with the speed and technology of service offered at each address and whether the subscriber at that service address is a residential or business subscriber, in lieu of the requirement to report subscriber counts

and percentage residential by Census Tract and speed tier.

Paperwork Reduction Act of 1995 Analysis

4. This Order on Reconsideration contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Legal Basis

5. The legal basis for any action that may be taken pursuant to the Order on Reconsideration is contained in Sections 1 through 5, 10, 11, 201 through 205, 215, 218 through 220, 251 through 271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 155, 160, 161, 201 through 205, 215, 218 through 220, 251 through 271, 303(r), 332, 403, 502, and 503, and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt.

Supplemental Final Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership,* WC Docket No. 07–38, Notice of Proposed Rulemaking, 22 FCC Rcd 7760, 7765–66, paras. 10–12, 22 (2007) (*Data Gathering Notice*). The Commission sought written public comment on the proposals in the Data Gathering Notice, including comment on the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was adopted in conjunction with the Commission's *Form 477 Order.* This present Supplemental FRFA conforms to the RFA, and addresses the new requirements adopted in this Order on Reconsideration (Order).

Need for, and Objectives of, the Order

7. In the Order, the Commission adopted certain changes to Form 477 to collect additional, improved data on broadband availability and use. The Commission expanded the FCC Form 477 data collection adopted in the *Form 477 Order* to collect additional data on the percentage of residential broadband service subscriptions. These changes will greatly improve the ability of the Commission to understand the extent of broadband deployment, and will enable the Commission to continue to develop and maintain appropriate broadband policies, in particular to carry out its obligation under section 706 of the Telecommunications Act of 1996 to ''determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.''

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

8. In the *Form 477 Order,* and accompanying FRFA, the Commission discussed the significant issues raised in response to public comments on the IRFA.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

9. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

Wireline Carriers and Service Providers

10. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by its action.

11. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers reported that they were engaged in the provision of either competitive local exchange carrier or competitive access provider services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by its action.

12. The Commission has included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

13. *Local Resellers.* The SBA has developed a small business size

standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 184 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 181 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by its action.

14. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 853 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by its action.

15. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by its action.

16. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 330 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 330 companies, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by its action.

17. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by its action.

18. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 104 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 102 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by its action.

19. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to the Commission's data, at the beginning of July 2006, the number of 800 numbers assigned was 7,647,941; the number of 888 numbers assigned was 5,318,667; the number of 877 numbers assigned was 4,431,162; and the number of 866 numbers assigned was 6,008,976. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,647,941 or fewer small entity 800 subscribers; 5,318,667 or fewer small entity 888 subscribers; 4,431,162 or fewer small entity 877 subscribers; and 5,318,667 or fewer small entity 866 subscribers.

Wireless Carriers and Service Providers

20. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

21. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior categories and associated data. For the first category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the second category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, using the prior categories and the available data, the Commission estimates that the majority of wireless firms can be considered small. According to Commission data, 432 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. The

Commission estimates that 221 of these are small, under the SBA small business size standard. Thus, under this category and size standard, about half of firms can be considered small.

22. *Common Carrier Paging.* The SBA has developed a small business size standard for Paging, under which a business is small if it has 1,500 or fewer employees. According to Commission data, 365 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 360 have 1,500 or fewer employees, and 5 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by its action. In addition, in the Paging Third Report and Order, the Commission developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

23. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, held in April 1997, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

24. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony. The Commission has estimated that 221 of these are small under the SBA small business size standard.

25. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

26. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

27. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

28. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has

both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, the Commission adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

29. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

30. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, the Commission adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

31. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' i.e., an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

32. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard.

33. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of its evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

34. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size

standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

35. *Offshore Radiotelephone Service*. This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

36. *39 GHz Service*. The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by its action.

37. *Wireless Cable Systems*. Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (''BRS''), formerly Multipoint Distribution Service (''MDS''), and the Educational Broadband Service (''EBS''), formerly Instructional Television Fixed Service (''ITFS''), to transmit video programming and provide broadband services to residential subscribers. These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services. The Commission estimates that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating $13. 5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS. Other standards also apply, as described.

38. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to the Commission indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13. 5 million annually. Therefore, the Commission estimates that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

39. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS). The Commission estimates that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small entities.

40. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that has annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a ''very small business,'' which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of ''small business'' and ''very small business'' in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, the Commission believes that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

41. *218–219 MHz Service*. The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the 218–219 MHz Report and Order and Memorandum Opinion and Order, the Commission established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years.

These size standards will be used in future auctions of 218–219 MHz spectrum.

42. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is the Commission's understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

43. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

Satellite Service Providers

44. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $13. 5 million. The most current Census Bureau data, however, are from the (last) economic census of 2002, and the Commission will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under both prior categories, such a business was considered small if it had, as now, $13. 5 million or less in average annual receipts.

45. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by its action.

46. The second category of Other Telecommunications ''comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by its action.

Cable and OVS Operators

47. In 2007, the SBA recognized new census categories for small cable entities. However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, the Commission will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities. In addition to the estimates provided above, the Commission considers certain additional entities that may be affected by the data collection from broadband service providers. Because section 706 requires it to monitor the deployment of broadband regardless of technology or transmission media employed, the Commission anticipates that some broadband service providers will not provide telephone service. Accordingly, the Commission describes below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

48. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13. 5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, under this size standard, the majority of firms can be considered small.

49. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

50. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The

Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore it is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

51. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with $13. 5 million or less in annual receipts. The Commission has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

Electric Power Generation, Transmission and Distribution

52. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: ''This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' The SBA has developed a small business size standard for firms in this category: ''A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year. Census data do not track electric output and the Commission has not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, the Commission estimates that 1,644 or fewer firms may be considered small under the SBA small business size standard.

Internet Service Providers, Web Portals, and Other Information Services

53. In 2007, the SBA recognized two new small business, economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals, and (2) All Other Information Services. However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, the Commission will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities.

54. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs ''provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.'' Under the SBA size standard, such a business is small if it has average annual receipts of $23 million or less. According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year. Of these, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

Other Internet-Related Entities

55. *Web Search Portals.* The Commission's action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''operate Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users.'' The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year. Of these, 303 had annual receipts of under $5 million, and an additional 15 firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

56. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $23 million or less in average annual receipts. According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year. Of these, 6,418 had annual receipts of under $10 million, and an additional 251 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

57. *All Other Information Services.* ''This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).'' The Commission's action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year. Of these, 138 had annual receipts of under $5 million, and an additional four firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

58. *Internet Publishing and Broadcasting.* ''This industry comprises establishments engaged in publishing and/or broadcasting content on the

Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.'' The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees. According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year. Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

59. In today's Order, the Commission expands the requirements adopted in the *Form 477 Order* to require wired, terrestrial fixed wireless, and satellite broadband providers to report the percentage of residential broadband connections they have in service in individual Census Tracts. While both large and small entities will be subject to these reporting requirements, the task is comparably easier for smaller entities that provide service to fewer customers and in more concentrated geographic areas, as the reporting procedures are broken down by geographic region and type of service. Few skills beyond the basic accounting skills already required of Form 477 filers, including small entities, are required to comply with the new and modified reporting and recordkeeping requirements adopted in this Order.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

60. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

61. In the *Data Gathering Notice,* the Commission invited comment on a variety of proposals that would impose further reporting and recordkeeping requirements, including alternatives to the measures taken in this Order. The Commission sought comment on whether there are any alternatives to the proposals in the order that would also serve the objective of improving broadband data collection, and the Commission invited comment on ways to mitigate the burden that might be imposed on small entities. The Commission sought comment on how the proposals might be tailored to mitigate the burden on smaller entities but nevertheless obtain data that would enable the Commission to determine whether subscribers in those territories have access to broadband services. To analyze the impact on small entities, the Data Gathering Notice asked whether entities maintain the required information in billing or marketing databases, and asked commenters to demonstrate the burden for the entities to collect and report this type of information.

62. The Commission finds that the approach adopted in today's Order best balances the costs of information collection and the public interest benefits of more detailed information on broadband deployment. As in the *Form 477 Order,* the Commission finds that granting a blanket exemption to small carriers would undercut the benefits of the revised information collection by depriving the Commission and other parties of adequate information on broadband deployment and adoption in rural, unserved, and underserved areas of the nation, the areas where additional information is most needed and would be likely to have the greatest impact. Additionally, the Commission notes that all Form 477 filers must currently submit, for each state in which they provide service, the percentage of their broadband subscribers that are residential. The Commission concludes that any incremental burden associated with providing this information on the Census Tract basis is outweighed by the utility of the data the Commission will obtain. The Commission thus applies the revised requirement to all broadband service providers, regardless of size.

63. *Report to Congress.* The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

64. Accordingly, *it is ordered* that, pursuant to Sections 1 through 5, 11, 201 through 205, 211, 215, 218 through 220, 251 through 271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 155, 161, 201 through 205, 211, 215, 218 through 220, 251 through 271, 303(r), 332, 403, 502, and 503, and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, this Order on Reconsideration, with all attachments, is adopted.

65. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

66. *It is further ordered,* pursuant to sections 1. 103(a) and 1. 427(b) of the Commission's rules, 47 CFR 1. 103(a), 1. 427(b), that the Commission will publish a document in the **Federal Register** announcing the effective date.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–14874 Filed 7–1–08; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 43

[WC Docket No. 07–38; FCC 08–89]

Development of Nationwide Broadband Data To Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice Over Internet Protocol (VoIP) Subscribership

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the Report and Order (Order), the Federal Communications Commission (Commission) amends the FCC Form 477 data collection in several respects to collect additional data on broadband service subscriptions. The Commission modifies Form 477 to require broadband providers to report the number of broadband connections in service in individual Census Tracts. The Commission adopts a voluntary household self-reporting system, and

will recommend to the Census Bureau that the American Community Survey questionnaire be modified to gather information about broadband availability and subscription in households.

The Commission adopts three additional changes to FCC Form 477. First, the Commission requires providers to report broadband service speed data in conjunction with subscriber counts according to new categories for download and upload speeds. These new speed tiers will better identify services that support advanced applications. Second, the Commission amends reporting requirements for mobile wireless broadband providers to require them to report the number of subscribers whose data plans allow them to browse the Internet and access the Internet content of their choice. Finally, the Commission requires providers of interconnected Voice over Internet Protocol (interconnected VoIP) service to report subscribership information on Form 477.

DATES: The amendments to §§ 1. 7001 and 43. 11 in this document contain information collection requirements that have not been approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Alan Feldman, Wireline Competition Bureau, Industry Analysis and Technology Division, (202) 418–0940.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket No. 07–38, adopted on March 19, 2008, and released on June 12, 2008. The complete text of this Report and Order is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at *www.fcc.gov.* Alternative formats are available for persons with disabilities by contacting the Consumer and Governmental Affairs Bureau, at (202) 418–0531, TTY (202) 418–7365, or at *fcc504@fcc.gov.* The complete text of the decision may be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc., Room CY–B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, or e-mail at *fcc@bcpiweb.com.*

Synopsis of Report and Order

Reporting Broadband Connection Information by Census Tract

1. *Wired, Terrestrial Fixed Wireless, and Satellite Broadband—Subscriber Counts.* Currently Form 477 requires covered providers to report the number of broadband connections they provide at the state level. In addition, to measure general service availability, Form 477 requires providers to report the 5-digit ZIP Codes in which they have at least one customer. The Commission agrees with those commenters who argue that collecting actual subscribership numbers in Census Tract areas will significantly improve the quality of the information collected, and that the value of these more detailed, informative reports outweighs the burdens of additional costs, if any, imposed on providers by this requirement.

2. Certain commenters argue that changing the geographic unit of reporting subscribers to 9-digit ZIP Codes would increase the granularity of reported information significantly, enabling policymakers to pinpoint unserved or underserved areas. Commenters opposing 9-digit ZIP Codes argue that reporting broadband subscribership information at that level would be inappropriate, would result in confidentiality problems, or would simply be too expensive. Still other commenters propose the use of geocoded data or of census-based data instead of 9-digit ZIP Codes.

3. The Commission agrees with those commenters who argue that census-based units provide more useful information for the Commission's policy purposes, and will thus require providers to report numbers of subscribers on the Census Tract level. Census-based units are more stable and static than ZIP Codes and thus will enable the Commission to measure change over time more effectively. Additionally, census-based units correspond more consistently to actual locations, are less likely to reveal individual identifiable information about consumers, and can be correlated with valuable demographic data (including race, income, education, and tribal land status), giving policymakers additional tools with which to analyze broadband uptake. By contrast, because ZIP Codes are designed for a different purpose than census-based units, namely to deliver efficiently the nation's mail, ZIP Codes are less useful for the Commission's purposes. In addition, 9-digit ZIP Codes ''do not correspond to any commonly recognized geographic boundaries, such as state or county lines, Congressional districts or service territories.''

4. Although some commenters urge us to select the smaller Census Block as the geographic unit for reporting subscriber numbers, the Commission finds that the larger Census Tract is more appropriate for the Commission's purposes. Census Tract numbers provide the beneficial census characteristics listed above, and because a Census Tract is larger than a Census Block, requiring providers to report at the Census Tract level rather than the Census Block level will be less burdensome. For this reason, among others, the Commission therefore disagrees with commenters that reporting by census-based units is overly burdensome compared to the benefits of this reporting. The California Public Utilities Commission comments that the California legislature recently enacted a statute requiring statewide video franchise applicants to report subscribers on a census basis. Commenters argue that this statute has provided California with valuable information from three large providers with minimal burden on the providers.

5. The Commission therefore requires facilities-based providers of wired, terrestrial fixed wireless, and satellite broadband connections to report the number of connections that they have in service to households and businesses in each of the Census Tracts in which they operate. The Commission requires these providers to report subscriptions in separate categories based on the speeds of the services. This information will provide us with a highly detailed and reliable account of broadband subscription and deployment nationwide, enabling us to make more informed policy determinations and to support more effectively the efforts of states and others seeking to promote broadband services. Because of the volume of information being reported, the Commission requires providers to supply, in a standardized database format, the number of subscribers in each Census Tract, broken down by technology type and upload and download speed.

6. The Commission disagrees with commenters that reporting by census-based units is, in general, overly burdensome compared to the benefits of this reporting. Nevertheless, the Commission will permit reporting entities to report data in an alternative format under limited circumstances, recognizing that some entities might suffer undue hardship in reporting on a census level. Specifically, upon a

showing of significant hardship, entities will be permitted to report a list of service addresses or GIS coordinates of service, along with the speed and technology of the broadband connection in service at each address, in lieu of reporting subscriber counts by Census Tract.

7. *Terrestrial Mobile Wireless Broadband—Subscriber Counts.* In the current Form 477 data collection process, mobile wireless broadband service providers report the number of connections they provide in particular states, and they report the 5-digit ZIP Codes that best represent their broadband service footprint. Because mobile service subscribers may move within and among broadband service areas, the Commission will continue to require them to report only the number of connections they provide in individual states. For the reasons set forth above, the Commission finds that the benefits of reporting service footprints at the Census Tract level outweighs the costs of the additional reporting. Therefore, the Commission requires mobile wireless broadband service providers to report the Census Tracts that best represent their broadband service footprint for each of the speed tiers in which they offer service. For purposes of Form 477, entities that use unlicensed devices to provide a commercial broadband Internet access service that can be received at any location within a service footprint, *e.g.*, throughout a town, adjoining towns, or portion of a metropolitan area, will continue to report subscriber information in the ''terrestrial mobile wireless'' category. By contrast, entities that use unlicensed devices to provide broadband Internet access connections to dispersed, fixed end user premises locations are required to report information in the ''terrestrial fixed wireless'' category of Form 477.

8. *Collecting Additional Information on Broadband Deployment and Adoption.* Comments in the record indicate strong support for creating a self-reporting system, at least as a supplement to other information collection methods. The Commission will design and implement a voluntary system that households may use to report availability and speed of broadband Internet access service at their premises. The voluntary registry will enable households to use the telephone, mail, email, or the Internet to report apparent unavailability of broadband service for their location and information about existing service, such as the type and actual speed of Internet access service they use. The information collected through the voluntary registry will be shared with public-private partnerships and with the Telecommunications Program of the United States Department of Agriculture (USDA) Rural Development Agency. Furthermore, in order to obtain data on broadband services at an even more granular level than the information collected by the changes that the Commission adopts in this Order, the Commission will recommend to the Census Bureau that the following question be added to the American Community Survey and the Puerto Rico Community Survey:

''What is the main method household members use to access the Internet from home?

(1) No members of this household access the Internet from home.
(2) A regular 'dial-up' telephone line.
(3) DSL (Digital Subscriber Line).
(4) A cable modem.
(5) A fiber optic line.
(6) A wireless or satellite connection.
(7) Some other means.''

New Broadband Connection Speed Categories

9. Form 477 currently gathers information within ''speed tiers'' in which providers categorize the maximum speeds of connections offered to customers. These tiers includes connections with information transfer rates that exceed 200 kbps in both directions and are less than 2. 5 mbps in the faster direction. The next tier includes connections with information transfer rates that exceed 200 kbps in both directions and are greater than or equal to 2. 5 mbps and less than 10.0 mbps in the faster direction. As many commenters noted, the range of information transfer capacities included in the current lowest tier of 200 kbps to 2. 5 mbps captures a wide variety of services, ranging from services capable of transmitting real time video to simple always-on connections not suitable for more than basic email or web browsing activities. The Commission finds that requiring providers to report data in more detailed speed tiers will better identify services that support advanced applications, creating distinctions that reflect different capacities for transmitting high quality video and similar high bandwidth communications. The Commission also finds that, as technologies and services evolve, upload speeds are an increasingly significant aspect of broadband services, and increased granularity in reporting both download and upload speed data will assist us in understanding the broadband services market.

10. Accordingly, in order to gather more detailed and therefore useful information about subscription to broadband services, the Commission revises Form 477 to establish an increased number of transfer speed categories, applicable to both download and upload service speeds. Specifically, the reporting tiers applicable to the reporting of both download and upload transfer rates under the new Form 477 collection are: (1) Greater than 200 kbps but less than 768 kbps; (2) equal to or greater than 768 kbps but less than 1. 5 mbps; (3) equal to or greater than 1. 5 mbps but less than 3. 0 mbps; (4) equal to or greater than 3. 0 mbps but less than 6.0 mbps, (5) equal to or greater than 6.0 mbps but less than 10.0 mbps; (6) equal to or greater than 10.0 mbps but less than 25.0 mbps; (7) equal to or greater than 25.0 mbps but less than 100.0 mbps; and (8) equal to or greater than 100 mbps. The Commission finds it appropriate to continue to evaluate broadband deployment by monitoring the migration of customers and services to higher speed tiers by continuing to collect information beginning at the 200 kbps threshold that is appropriately considered ''first generation.'' Additionally, the Commission will retain the requirement that providers report connections with download transfer rates above 200 kbps and upload speeds of less than or equal to 200 kbps, because upload services in this category continue to be a prevalent offering in the broadband services market. Filers will report the number of subscribers for each type of technology of service they offer, in each combination of download and upload speed categories, within each Census Tract in which the providers have subscribers.

11. The action the Commission takes in this Order will help ensure that the Commission gathers the data it requires in order to carry out its obligations. While these changes may increase reporting requirements for some service providers, and require new methods for comparison of new data to old data, the Commission agrees with commenters who note that such changes will improve the Commission's understanding of the market for broadband services. Through these adjustments, the Commission continues and extend the Commission's efforts to collect data to assess broadband deployment based on tiered speeds. It is the Commission's intention to revisit these speed thresholds every two years to assess whether advances in technology warrant further refinements.

Other Reporting Requirements for Mobile Wireless Broadband Providers

12. *Distinguishing Subscribers by Service Usage.* The Commission notes that providers of mobile wireless broadband service are currently required to ''report the number of end users whose mobile device, such as wireless modem laptop cards, smartphones, or handsets, are capable of sending or receiving data at speeds in excess of 200 kbps.'' This information is valuable in that it represents, in the broadest sense, those mobile wireless users with the capacity to access broadband services. Commenters note that tracking those users with a month-to-month or longer plan for broadband data transfer produces more accurate information about mobile broadband usage than simply tracking users who are capable of such use. The Commission agrees with these commenters and concludes that the benefits of gathering separate information about mobile broadband subscriptions that contain a data plan, including the increased ability of the Commission to understand the level of mobile wireless usage, outweigh any additional reporting costs. The Commission therefore revises Form 477 to add a second reporting category in which mobile service providers will report the number of subscribers whose device and subscription permit them to access the lawful Internet content of their choice. When counting such subscribers, the Commission directs providers to exclude subscribers whose choice of content is restricted to only customized-for-mobile content, and to exclude subscribers whose subscription does not include, either in a bundle or as a feature added to a voice subscription, a data plan providing the ability to transfer, on a monthly basis, either a specified or an unlimited amount of data to and from Internet sites of the subscriber's choice.

13. *Residential Subscribers.* The Commission modifies the Form 477 instructions for counting certain mobile wireless broadband subscribers as residential subscribers. Commenters note that many individuals who use a mobile device for business purposes also use it for personal purposes, and that employers variously underwrite employees' business-related use of mobile wireless services. Commenters also note that mobile wireless providers may differ in their marketing strategies and how they distinguish market segments. Nevertheless, the Commission wishes to obtain greater Form 477 reporting consistency and accuracy. Therefore, the Commission directs mobile wireless broadband providers to report as residential subscriptions those subscriptions that are not billed to a corporate account, to a non-corporate business customer account, or to a government or institutional account.

Reporting Requirements for Interconnected VoIP Service Providers

14. Only some providers of interconnected Voice over Internet Protocol (VoIP) services are required to report information on Form 477. Interconnected VoIP service subscribers represent an important and rapidly growing part of the U.S. voice service market, and interconnected VoIP services are becoming increasingly competitive with other forms of local telephone service. Under the Commission's current reporting rules, end-user subscriptions to interconnected VoIP services are substantially underreported, which distorts the Commission's view of the extent of interconnected VoIP service deployment and uptake, and potentially distorts the Commission's picture of the U.S. voice service market. The Commission's predictive judgment is that, if the Commission did nothing to update its reporting rules, these distortions would continue to grow.

15. The Commission concludes that the Commission has the authority under Title I of the Act to impose reporting obligations on providers of interconnected VoIP service, and are justified in exercising this authority. Ancillary jurisdiction may be employed, in the Commission's discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is ''reasonably ancillary to the effective performance of [its] various responsibilities.'' Both predicates for ancillary jurisdiction are satisfied here.

16. First, as the Commission concluded in previous orders, interconnected VoIP services fall within the subject matter jurisdiction granted to the Commission in the Act. Second, the Commission's analysis requires us to evaluate whether imposing reporting obligations is reasonably ancillary to the effective performance of the Commission's various responsibilities. Based on the record in this matter, the Commission finds that requiring interconnected VoIP service providers to report the number of subscribers they serve (both end user and for resale), the percentage of these who are residential, and whether the interconnected VoIP service is provided over a broadband connection provided by the filer or by the filer's affiliate is reasonably ancillary to the effective performance of the Commission's various responsibilities under the Act. The Commission has a responsibility under section 706 of the Telecommunications Act of 1996 to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability. Furthermore, the Act specifically authorizes the Commission to require annual reports from all carriers subject to the Act, as well as to require the production of other information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.

17. The Commission's primary goal underlying the reporting requirements is the identification of unserved and underserved areas with respect to advanced telecommunications capability. The Commission's ability to perform its functions related to this objective depends upon its having adequate information about deployment and uptake of advanced telecommunications capability. As explained above, the Commission does not believe it is possible to obtain an accurate view of the U.S. voice service market without gathering data about interconnected VoIP service subscribers. Thus, the Commission's continued ability to exercise its responsibilities—such as identifying unserved and underserved markets—depends in part on requiring interconnected VoIP providers to report the number of end-user and resale subscribers they serve, the percentage of these who are residential, and whether the interconnected VoIP service is used over a broadband connection provided by the filer or by the filer's affiliate. Thus, the Commission concludes that imposing these reporting obligations is reasonably ancillary to the effective performance of its responsibilities.

18. Commenters noted that interconnected VoIP services are becoming increasingly competitive with local telephone service, and that it is appropriate to collect information on subscriptions, including the number of connections and the percentage of those connections that are residential, in order to determine the extent of competition posed by the services. The Commission concludes that gathering the number of end-user and resale subscribers to interconnected VoIP service and the percentage of those subscribers who are residential would provide valuable information that would enable the Commission to track deployment and adoption of interconnected VoIP service across the nation. Accordingly, the Commission modifies Form 477 to

require providers of interconnected VoIP service to report information about the number of end-user and resale subscribers they have in individual states, and the percentage of the subscribers who purchase the provider's residential grade service plan. Additionally, to collect useful information as set forth in the Data Gathering Notice, the Commission modifies Form 477 to require providers of interconnected VoIP service to report a list of 5-digit ZIP Codes within each state in which they have at least one subscriber. This requirement achieves regulatory parity across technologies that offer voice-grade equivalent lines or channels.

19. The Commission also concludes that gathering information regarding the number of subscribers who receive broadband service in conjunction with interconnected VoIP service, and the share of interconnected VoIP service subscribers who can use the service over any broadband connection, would provide valuable information on the deployment of interconnected VoIP service. The Commission therefore requires interconnected VoIP providers to report information about the type(s) of broadband connections, if any, they or their affiliates provide in conjunction with interconnected VoIP service, and to report whether the interconnected VoIP service must be used over a single predetermined broadband connection or can be used over any broadband connection.

Other Matters

20. *Exemptions for Small and Medium-Size Operators.* The changes to the Commission's Form 477 information collection will significantly increase the Commission's ability to carry out its statutory duties under section 706 of the Communications act to monitor broadband deployment. The new information gathered by Form 477 will enable the Commission, the industry, and other parties to realize many benefits, including forming a more detailed understanding of the scope of broadband adoption, connecting data on broadband services to demographic data collected by the Census Bureau, and pinpointing areas that are currently unserved or underserved. Some commenters suggest that small and medium sized carriers should be exempt from the modified reporting requirements that the Commission adopts in this Order. The Commission disagrees. Creating a blanket exemption for small and medium sized carriers would undercut the benefits of the Commission's revised information collection by depriving the Commission and other parties of adequate information on broadband deployment and adoption in rural, unserved, and underserved areas of the nation, the areas where additional information is most needed and would be likely to have the greatest impact. However, in order to ease the process of this transition in reporting methodology, upon a showing of significant hardship, reporting entities may report a list of service addresses or GIS coordinates of service, along with the speed and technology of service offered at each address, in lieu of producing and reporting subscribership counts by Census Tract.

Paperwork Reduction Act of 1995 Analysis

21. This Report and Order contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Legal Basis

22. The legal basis for any action that may be taken pursuant to the Further Notice is contained in sections 1 through 5, 10, 11, 201 through 205, 215, 218 through 220, 251 through 271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 155, 160, 161, 201 through 205, 215, 218 through 220, 251 through 271, 303(r), 332, 403, 502, and 503, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt.

Final Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the April 2007 Data Gathering Notice. The Commission sought written public comment on the proposals in the Data Gathering Notice, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Order

24. In today's Report and Order (Order), the Commission adopts certain changes to Form 477 to collect additional, improved data on broadband availability and use. The Commission amends the FCC Form 477 data collection in several respects to collect additional data on broadband service subscriptions. These changes will greatly improve the ability of the Commission to understand the extent of broadband deployment, and will enable the Commission to continue to develop and maintain appropriate broadband policies, in particular to carry out its obligation under section 706 of the Telecommunications Act of 1996 to ''determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.''

25. These changes include requiring certain reporting entities to report broadband service subscribership counts within Census Tracts, and to report Census Tract information concerning the availability of their broadband services. The Order also changes the speed tiers under which broadband connections are reported, establishes new terminology for levels of broadband connection speed, and changes Form 477 to collect certain subscribership information from wireless and interconnected VoIP service providers. These new reporting requirements will facilitate the Commission's understanding of the extent of broadband deployment in the United States, particularly deployment in unserved and underserved areas

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

26. In this section, the Commission responds to comments filed in response to the IRFA. The Commission recognizes that many businesses, including small rural ILECs, will need to modify their practices to collect, maintain, and report additional data at the Census Tract level. The Commission is not persuaded by comments in the record arguing that the costs of complying with the increased reporting requirements in today's Order outweighs the benefits of collecting additional data, and the Commission is persuaded by comments indicating that it ought to collect information at a more granular level, and in particular at the level of Census Tracts. Nevertheless, in the Order, the Commission provides an express exception to this rule of which small businesses can avail themselves. Specifically, upon a showing of

significant hardship, reporting entities will be permitted to report a list of service addresses or GIS coordinates of service, along with the speed and technology of the broadband connection in service at each address, in lieu of reporting subscriber counts by technology, speed, and Census Tract. Comments in the record also contend that the Data Gathering Notice failed to include a complete estimate of the costs and burdens of compliance as a general matter. However, the record developed in this proceeding, in response to the Data Gathering Notice, demonstrates that the costs would not be burdensome. More importantly, other than conclusory assertions that the data collection as proposed in the Data Collection Order would be burdensome, the record includes no convincing evidence of any specific, actual burden, such as employee hours or monetary costs.

Description and Estimate of the Number of Small Entities To Which the Proposed Rules May Apply

27. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

Wireline Carriers and Service Providers

28. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by its action.

29. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers*.'' Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers reported that they were engaged in the provision of either competitive local exchange carrier or competitive access provider services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by its action.

30. The Commission has included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

31. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 184 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 181 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by its action.

32. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 853 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by its action.

33. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by its action.

34. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 330 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 330 companies, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by its action.

35. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator

service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by its action.

36. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 104 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 102 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by its action.

37. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to the Commission's data, at the beginning of July 2006, the number of 800 numbers assigned was 7,647,941; the number of 888 numbers assigned was 5,318,667; the number of 877 numbers assigned was 4,431,162; and the number of 866 numbers assigned was 6,008,976. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,647,941 or fewer small entity 800 subscribers; 5,318,667 or fewer small entity 888 subscribers; 4,431,162 or fewer small entity 877 subscribers; and 5,318,667 or fewer small entity 866 subscribers.

Wireless Carriers and Service Providers

38. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

39. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior categories and associated data. For the first category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the second category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, using the prior categories and the available data, the Commission estimates that the majority of wireless firms can be considered small. According to Commission data, 432 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. The Commission estimates that 221 of these are small, under the SBA small business size standard. Thus, under this category and size standard, about half of firms can be considered small.

40. *Common Carrier Paging.* The SBA has developed a small business size standard for Paging, under which a business is small if it has 1,500 or fewer employees. According to Commission data, 365 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 360 have 1,500 or fewer employees, and 5 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by its action. In addition, in the Paging Third Report and Order, the Commission developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

41. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, held in April 1997, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

42. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to

Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony. The Commission has estimated that 221 of these are small under the SBA small business size standard.

43. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

44. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

45. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

46. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, the Commission adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

47. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or

very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

48. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, the Commission adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

49. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' i.e., an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

50. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard.

51. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of its evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161. 775–162. 0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

52. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

53. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

54. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by its action.

55. *Wireless Cable Systems.* Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (''BRS''), formerly Multipoint Distribution Service (''MDS''), and the Educational Broadband Service (''EBS''), formerly Instructional Television Fixed Service (''ITFS''), to transmit video programming and provide broadband services to residential subscribers.

These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services. The Commission estimates that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating $13. 5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS. Other standards also apply, as described.

56. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to the Commission indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13. 5 million annually. Therefore, the Commission estimates that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

57. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS). The Commission estimates that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small entities.

58. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that has annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a ''very small business,'' which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of ''small business'' and ''very small business'' in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, the Commission believes that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

59. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the 218–219 MHz Report and Order and Memorandum Opinion and Order, the Commission established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

60. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is the Commission's understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

61. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

Satellite Service Providers

62. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $13. 5 million. The most current Census Bureau data, however, are from the (last) economic census of 2002, and the Commission will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under both prior categories, such a business was considered small if it had, as now, $13. 5 million or less in average annual receipts.

63. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this

total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by its action.

64. The second category of Other Telecommunications ''comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by its action.

Cable and OVS Operators

65. In 2007, the SBA recognized new census categories for small cable entities. However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, the Commission will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities. In addition to the estimates provided above, the Commission considers certain additional entities that may be affected by the data collection from broadband service providers. Because section 706 requires it to monitor the deployment of broadband regardless of technology or transmission media employed, the Commission anticipates that some broadband service providers will not provide telephone service. Accordingly, the Commission describes below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

66. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13. 5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, under this size standard, the majority of firms can be considered small.

67. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

68. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore it is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

69. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with $13. 5 million or less in annual receipts. The Commission has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

Electric Power Generation, Transmission and Distribution

70. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: ''This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' The SBA has developed a small business size standard for firms in this category: ''A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year. Census data do not track electric output and the Commission has not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric

output. Consequently, the Commission estimates that 1,644 or fewer firms may be considered small under the SBA small business size standard.

Internet Service Providers, Web Portals, and Other Information Services

71. In 2007, the SBA recognized two new small business, economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals, and (2) All Other Information Services. However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, the Commission will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities.

72. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs ''provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.'' Under the SBA size standard, such a business is small if it has average annual receipts of $23 million or less. According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year. Of these, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

Other Internet-Related Entities

73. *Web Search Portals.* The Commission's action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.'' The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year. Of these, 303 had annual receipts of under $5 million, and an additional 15 firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

74. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $23 million or less in average annual receipts. According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year. Of these, 6,418 had annual receipts of under $10 million, and an additional 251 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

75. *All Other Information Services.* ''This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).'' The Commission's action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year. Of these, 138 had annual receipts of under $5 million, and an additional four firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

76. *Internet Publishing and Broadcasting.* ''This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.'' The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees. According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year. Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, the Commission estimates that the majority of these firms small entities that may be affected by its action.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

77. Today's Report and Order requires broadband providers to report the number of broadband connections they have in service in individual Census Tracts; it requires providers to report subscriber counts under alternative speed tiers; it requires mobile wireless broadband providers to report the number of subscribers whose data plans allow them to browse the Internet and access the Internet content of their choice; and it requires providers of interconnected Voice over Internet Protocol (interconnected VoIP) service to report subscribership information. While both large and small entities will be subject to these reporting requirements, the task is comparably easier for smaller entities that provide service to fewer customers and in more concentrated geographic areas, as the reporting procedures are broken down by geographic region and type of service. Few skills beyond the basic accounting skills already required of Form 477 filers, including small entities, are required to comply with the new and modified reporting and recordkeeping requirements; specifically, they will need to modify their billing systems in order to accommodate the reporting of information by Census Tract.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

78. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

79. In the Data Gathering Notice, the Commission invited comment on a variety of proposals that would impose further reporting and recordkeeping requirements, including alternatives to the measures taken in this Order. The Commission sought comment on whether there are any alternatives not discussed that would also serve the objective of improving broadband data collection, and it invited comment on ways to mitigate the burden that might be imposed on small entities. The Commission sought comment on how the proposals might be tailored to mitigate the burden on smaller entities but nevertheless obtain data that would enable it to determine whether subscribers in those territories have access to broadband services. To analyze the impact on small entities, the Data Gathering Notice asked whether entities maintain the required information in billing or marketing databases, and asked commenters to demonstrate the burden for the entities to collect and report this type of information.

80. The Commission finds that the approach adopted in today's Order best balances the costs of information collection and the public interest benefits of more detailed information on broadband deployment. Collecting subscriber count information at the Census Tract level, as compared to collecting information at the 5-digit or 9-digit ZIP Code level or some other unit, results in a greatly improved understanding of the market for broadband services while imposing a minimum burden on reporting entities. While additional information collected by other methods, such as public-private partnerships, self-reporting, and the U.S. Census, can supplement required reporting by service providers, these methods have many limitations and are not sufficient by themselves, and cannot replace existing Form 477 reported information.

81. The Commission offers an alternative for businesses for which the Census Tract reporting poses a significant hardship. Upon a showing of significant hardship, entities will be permitted to report a list of service addresses or GIS coordinates of service, along with the speed and technology of service offered at each address, in lieu of reporting subscriber counts by technology, speed, and Census Tract. This alternative will merely require an entity to report the data it already has or ought to have, and the Commission will use its own resources to analyze the data.

82. While the Commission recognizes that service providers will still incur implementation and recurring costs for these modified reporting requirements, it concludes that the benefits to the public of gathering more complete information on the extent of broadband deployment between the economic burden imposed on these providers. To the extent that a reporting entity would suffer a significant hardship, the Commission has created an alternative reporting requirement.

83. *Report to Congress:* The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

84. Accordingly, *it is ordered* that, pursuant to sections 1 through 5, 11, 201 through 205, 211, 215, 218 through 220, 251 through 271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 155, 161, 201 through 205, 211, 215, 218 through 220, 251 through 271, 303(r), 332, 403, 502, and 503, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, this Further Notice, with all attachments, *is adopted.*

85. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

86. The amendments to §§ 1. 7001 and 43. 11 in this document contain information collection requirements that have not been approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

List of Subjects in 47 CFR Parts 1 and 43

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 43 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, and 303(r).

■ 2. Section 1. 7001 is amended by revising paragraphs (a)(2), (b), and (c) to read as follows:

§ 1. 7001 Scope and content of filed reports.

(a) * * *

(2) *Own facilities.* Lines and wireless channels the entity actually owns and facilities that it obtained the right to use from other entities as dark fiber or satellite transponder capacity.

* * * * *

(b) All commercial and government-controlled entities, including but not limited to common carriers and their affiliates (as defined in 47 U.S.C. 153 (1)), cable television companies, fixed wireless providers, terrestrial and satellite mobile wireless providers, utilities and others, that are facilities-based providers, shall file with the Commission a completed FCC Form 477, in accordance with the Commission's rules and the instructions to the FCC Form 477, for each state in which they provide service.

(c) Respondents identified in paragraph (b) of this section shall include in each report a certification signed by an appropriate official of the respondent (as specified in the instructions to FCC Form 477).

* * * * *

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

■ 3. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104–104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

■ 4. Section 43. 11 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 43. 11 Reports of Local Exchange Competition Data.

(a) All common carriers and their affiliates (as defined in 47 U.S.C. 153(1)) providing telephone exchange or exchange access service (as defined in 47 U.S.C. 153(16) and (47)), commercial mobile radio service (CMRS) providers offering mobile telephony (as defined in § 20.15(b)(1) of this chapter), and Interconnected Voice over IP service

providers (as defined in § 9.3 of this chapter), shall file with the Commission a completed FCC Form 477, in accordance with the Commission's rules and the instructions to the FCC Form 477, for each state in which they provide service.

(b) Respondents identified in paragraph (a) of this section shall include in each report a certification signed by an appropriate official of the respondent (as specified in the instructions to FCC Form 477).

(c) Respondents may make requests for Commission non-disclosure of provider-specific data contained in the Form 477 under § 0.459 of this chapter by so indicating on the Form 477 at the time that the subject data are submitted. The Commission shall make all decisions regarding non-disclosure of provider-specific information, except that the Chief of the Wireline Competition Bureau may release provider-specific information to a state commission, provided that the state commission has protections in place that would preclude disclosure of any confidential information.

* * * * *

[FR Doc. E8–14873 Filed 7–1–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 36 and 54

[WC Docket No. 05–337; CC Docket No. 96–45; FCC 08–122]

High-Cost Universal Service Support; Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: In this Order, the Commission takes action to rein in the explosive growth in high-cost universal service support disbursements. As recommended by the Federal-State Joint Board on Universal Service, the Commission adopts an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (ETCs) may receive. Specifically, as of the effective date of this Order, total annual competitive ETC support for each state will be capped at the level of support that competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis. The Commission also adopts two limited exceptions from the specific application of the interim cap. The interim cap will remain in place only until the Commission adopts comprehensive high-cost universal service reform. In addition, the Commission resolves most of the petitions for ETC designation currently pending before the Commission.

DATES: This Order will be effective August 1, 2008.

FOR FURTHER INFORMATION CONTACT: Ted Burmeister, Telecommunications Access Policy Division, Wireline Competition Bureau, 202–418–7389 or TTY: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in WC Docket No. 05–337 and CC Docket No. 96–45, adopted on April 29, 2008, and released on May 1, 2008. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 800–378–3160 or 202–863–2893, facsimile 202–863–2898, or via e-mail at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Final Paperwork Reduction Act of 1995 Analysis: This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995). It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' Small Business Paperwork Relief Act of 2002, Public Law 107–198, 116 Stat. 729 (2002); 44 U.S.C. 3506(c)(4).

In this present document, we have assessed the effects of demonstrating compliance with the exception to the interim cap, and find that there may be an increased administrative burden on businesses with fewer than 25 employees. We have taken steps to minimize the information collection burden for small business concerns, including those with fewer than 25 employees. First, we note that compliance with the exception is voluntary—small business concerns are not required to comply with the information collection. In addition, compliance with the exception will be elected by carriers on a study area by study area basis. Carriers need only provide additional information on the study areas for which they elect to rely on the exception to the interim cap.

Synopsis of the Order

Introduction

1. In this Order, we take action to rein in the explosive growth in high-cost universal service support disbursements. As recommended by the Federal-State Joint Board on Universal Service (Joint Board), we adopt an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (ETCs) may receive. *See High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Recommended Decision, 22 FCC Rcd 8998 (Fed.-State Jt. Bd. 2007) (*Recommended Decision*). Specifically, as of the effective date of this Order, total annual competitive ETC support for each state will be capped at the level of support that competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis. We also adopt two limited exceptions from the specific application of the interim cap. First, a competitive ETC will not be subject to the interim cap to the extent it files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent local exchange carrier (LEC). Second, we adopt a limited exception for competitive ETCs serving tribal lands or Alaska Native regions. The interim cap will remain in place only until the Commission adopts comprehensive high-cost universal service reform. The Commission plans to move forward on adopting comprehensive reform measures in an expeditious manner. The Commission commits to completing a final order on comprehensive reform as quickly as feasible after the comment cycle is completed on the pending Commission Notices regarding comprehensive reform. Finally, we resolve most of the petitions for ETC designation currently pending before the Commission.

Background

2. For the past several years, the Joint Board has been exploring recommending modifications to the

Commission's high-cost universal service support rules. In 2002, the Commission asked the Joint Board to review certain of the Commission's rules related to the high-cost universal service support mechanisms. *See Federal-State Joint Board on Universal Service,* CC Docket No. 96–45, Order, 67 FR 70703 (2002). Among other things, the Commission asked the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC provides service. In response, the Joint Board made a number of recommendations concerning the designation of ETCs in high-cost areas, but declined to recommend that the Commission modify the basis of support (i.e., the methodology used to calculate support) in study areas with multiple ETCs. Instead, the Joint Board recommended that it and the Commission continue to consider possible modifications to the basis of support for competitive ETCs as part of an overall review of the high-cost support mechanisms for rural and non-rural carriers.

3. In 2004, the Commission asked the Joint Board to review the Commission's rules relating to the high-cost universal service support mechanisms for rural carriers and to determine the appropriate rural mechanism to succeed the plan adopted in the *Rural Task Force Order. See Federal-State Joint Board on Universal Service,* CC Docket No. 96–45, Order, 69 FR 48232, para. 1 (2004) (*Rural Referral Order*); *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96–45, and Report and Order in CC Docket No. 00–256, 66 FR 30080 (2001) (*Rural Task Force Order*); *see also Federal-State Joint Board on Universal Service; High-Cost Universal Service Support,* CC Docket No. 96–45, WC Docket No. 05–337, Order, 71 FR 30298 (2006) (extending the *Rural Task Force Order* plan). In August 2004, the Joint Board sought comment on issues the Commission referred to it related to the high-cost universal service support mechanisms for rural carriers. *See Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support,* CC Docket No. 96–45, Public Notice, 69 FR 53917 (Fed.-State Jt. Bd. 2004). The Joint Board also specifically sought comment on the methodology for calculating support for ETCs in competitive study areas. Since that time, the Joint Board has sought comment on a variety of specific proposals for addressing the issues of universal service support for rural carriers and the basis of support for competitive ETCs, including proposals developed by members and staff of the Joint Board, as well as the use of reverse auctions (competitive bidding) to determine high-cost universal service funding to ETCs. *See Federal State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support,* CC Docket No. 96–45, Public Notice, 20 FCC Rcd 14267 (Fed.-State Jt. Bd. 2005); *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support,* WC Docket No. 05–337, CC Docket No. 96–45, Public Notice, 21 FCC Rcd 9292 (Fed.-State Jt. Bd. 2006).

4. On May 1, 2007, the Joint Board recommended that the Commission adopt an interim cap on high-cost universal service support for competitive ETCs while the Joint Board considered proposals for comprehensive reform. *See Recommended Decision,* 22 FCC Rcd at 8999–9001, paras. 4–7. Specifically, the Joint Board recommended that the Commission cap competitive ETC support at the amount of support received by competitive ETCs in 2006. The Joint Board recommended that the cap on competitive ETC support be applied at the state level. Finally, the Joint Board recommended that the interim cap apply until one year from the date that the Joint Board makes its recommendation regarding high-cost universal service reform. On May 14, 2007, the Commission released a Notice of Proposed Rulemaking, seeking comment on the Joint Board's recommendation. *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Notice of Proposed Rulemaking, 72 FR 28936 (2007) (*Notice*). On November 19, 2007, the Joint Board submitted to the Commission recommendations for comprehensive reform of high-cost universal service support. *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Recommended Decision, 22 FCC Rcd 20477 (2007) (*Comprehensive Reform Recommended Decision*). On January 29, 2008, the Commission released three notices of proposed rulemaking addressing proposals for comprehensive reform of the high-cost universal service support program. *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Notice of Proposed Rulemaking, 73 FR 11580 (2008) (*Identical Support Rule NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Notice of Proposed Rulemaking, 73 FR 11591 (2008) (*Reverse Auctions NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Notice of Proposed Rulemaking, 73 FR 11587 (2008) (*Joint Board Comprehensive Reform NPRM*) (collectively *Reform Notices*). Comments on the *Reform Notices* were due by April 17, 2008 and reply comments were due by May 19, 2008. *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* CC Docket No. 96–45; WC Docket No. 05–337, Order, DA 08–674 (rel. Mar. 24, 2008) (extending comment and reply comment dates); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* CC Docket No. 96–45; WC Docket No. 05–337, Order, DA 08–1168 (rel. May 15, 2008) (extending reply comment date).

Discussion

5. We adopt, with limited modifications, the Joint Board's recommendation for an emergency, interim cap on high-cost support for competitive ETCs. This action is necessary to halt the rapid growth of high-cost support that threatens the sustainability of the universal service fund. As described below, annual support for competitive ETCs in each state will be capped at the level of support that competitive ETCs in that state were eligible to receive during March 2008, on an annualized basis. As further discussed below, we also create a limited exception to the cap to allow competitive ETCs that serve tribal lands or Alaska Native regions to continue to receive support at uncapped levels.

Need for a Cap on Competitive ETC Support

A Cap on Competitive ETC Support Is Required To Preserve the Sustainability and Sufficiency of Universal Service

6. We agree with the Joint Board's assessment that the rapid growth in high-cost support places the federal universal service fund in dire jeopardy. In 2007, the universal service fund

provided approximately $4.3 billion per year in high-cost support. In contrast, in 2001, high-cost universal service support totaled approximately $2. 6 billion. In recent years, this growth has been due to increased support provided to competitive ETCs, which receive high-cost support based on the per-line support that the incumbent LECs receive, rather than on the competitive ETCs' own costs. While support to incumbent LECs has been flat since 2003, competitive ETC support, in the seven years from 2001 through 2007, has grown from under $17 million to $1. 18 billion—an average annual growth rate of over 100 percent. We find that the continued growth of the fund at this rate is not sustainable and would require excessive (and ever growing) contributions from consumers to pay for this fund growth.

7. We conclude that immediate action must be taken to stem the dramatic growth in high-cost support. Therefore, as recommended by the Joint Board, we immediately impose an interim cap on high-cost support provided to competitive ETCs until fundamental comprehensive reforms are adopted to address issues related to the distribution of support and to ensure that the universal service fund will be sustainable for future years. The interim cap that we adopt herein limits the annual amount of high-cost support that competitive ETCs can receive in the interim period for each state to the amount competitive ETCs were eligible to receive in that state during March 2008, on an annualized basis.

8. We find that adopting an interim cap is consistent with the requirement of section 254 of the Communications Act of 1934, as amended (the Act), that support be ''sufficient'' to meet the Act's universal service purposes. Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996) (the Act). The Commission previously has concluded that the statutory principle of ''sufficiency'' proscribes support in excess of that necessary to achieve the Act's universal service goals. *MAG Plan Order*, 66 FR 59719, paras. 131–32; *Rural Task Force Order*, 66 FR 30080, para. 27; *Federal-State Joint Board on Universal Service*, CC Docket No. 96–45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 68 FR 69627, paras. 36–37 (2003), *remanded, Qwest Corp.* v. *FCC*, 398 F.3d 1222 (10th Cir. 2005); 47 U.S.C. 254(b). Notably, the Commission has previously adopted cost controls, including adopting an indexed cap on the high-cost loop support mechanism, which the U.S. Court of Appeals for the Fifth Circuit held to be consistent with the Act's universal service mandate. *Alenco Communications, Inc.* v. *FCC*, 201 F.3d 608, 620–21 (5th Cir. 2000) (''[t]he agency's broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service'').

9. Similarly, our action today applies interim cost controls to the aspect that most directly threatens the specificity, predictability, and sustainability of the fund: the rapid growth of competitive ETC support. *See* 47 U.S.C. 254(b)(5). A primary consequence of the existing competitive ETC support rules has been to promote the sale of multiple supported wireless handsets in given households. *See Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, WC Docket No. 05–333, Memorandum Opinion and Order, 22 FCC Rcd 5207, 5218, para. 17 (2007) (stating that a majority of presubscribed interexchange customers also subscribe to mobile wireless service); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 07–71, Twelfth Report, 23 FCC Rcd 2241, at para. 246 (2008) (citing survey reporting that only approximately 11. 8 percent of U.S. households relied exclusively on wireless phones in 2006) (*2007 Commercial Mobile Services Report*). We do not today make a final determination regarding the level of support to competitive ETCs that is sufficient, but not excessive, for achieving the Act's universal service goals because we expect to take further action to enact fundamental reform. *See Alenco*, 201 F.3d at 619 (''excessive funding may itself violate the sufficiency requirements of the Act''). Instead, today we take the reasonable, interim step of capping annual competitive ETC support for each state at the amount competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis. Doing so will provide a necessary constraint on the growth of support until comprehensive reform is adopted.

10. We do not find it necessary to adopt additional caps on support provided to incumbent LECs at this time because, as the Joint Board noted in its *Recommended Decision*, high-cost support to incumbent LECs has been flat and is therefore exerting less pressure on the universal service fund. *Recommended Decision*, 22 FCC Rcd at 9001, para. 5. Moreover, incumbent LEC high-cost loop support is already capped, and incumbent LEC interstate access support is subject to a targeted limit. *See* 47 CFR 36.603, 54.801(a). Incumbent LEC disbursements from other support mechanisms, like local switching support and interstate common line support, have been stable in recent years. Further, although high-cost model support has no actual cap, it does have built-in restraints on growth, which derive from the fact that support is based on stable statewide average estimated costs. Accordingly, we limit the interim cap we adopt today to high-cost support provided to competitive ETCs.

11. Some parties argue that inefficiencies in high-cost support for incumbent LECs are the root cause of the high-cost support growth, and that the Commission must address these inefficiencies to stabilize the fund. Although addressing inefficiencies in incumbent LEC support may be necessary for comprehensive reform, we disagree that such review of incumbent LEC support is necessary immediately to rein in the growth of high-cost support for an interim period. First, as we have noted, total incumbent LEC support has not grown in recent years and does not have the same potential for rapid explosive growth competitive ETC support does. Second, although increases in incumbent LEC high-cost support may contribute indirectly to growth in high-cost support for competitive ETCs, the interim cap on competitive ETC support we adopt today will eliminate that growth potential. To the extent that there may be inefficiencies in incumbent LEC high-cost support, we anticipate addressing those in the context of comprehensive universal service reform.

An Interim Cap on Competitive ETC Support Is Consistent With the Act

12. We disagree with arguments that capping support for competitive ETCs violates the Act. As a general matter, the Commission's discretion to establish caps on high-cost support has been upheld. *See Alenco*, 201 F.3d at 620. Moreover, as we discuss further below, we find no merit in the arguments raised by commenters in this proceeding that this particular cap violates the Act.

13. We disagree with comments that this cap violates the Act's statutory principles. CTIA argues that the cap would violate the Act's requirements that rates in rural areas should be reasonably comparable to those in urban areas. CTIA, however, fails to provide

any data demonstrating that, or analysis explaining why the cap would result in rural rates that are not comparable with those in urban areas. Instead, it merely asserts that ''[t]he proposed cap will deny customers access to reasonably equivalent rates, and to reasonably equivalent services.'' There simply is no support in the record for this contention. To the contrary, many wireless carriers that do not receive high-cost support compete against wireless competitive ETCs that do receive support, and many wireless competitive ETCs served high-cost territories before they were designated as eligible to receive support.

14. CTIA, along with Dobson, also contends that the cap violates the universal service principle of sufficiency. Neither commenter, however, provides any support for its contentions. To the contrary, as we explain above, we believe that the statutory principle of sufficiency is not inconsistent with the interim ''cost controls'' we adopt herein. We find that the interim cap we adopt is consistent with the principle of sufficiency as defined by the court in *Alenco* because it seeks to eliminate support in excess of that necessary to ensure the Act's universal service goals. *See Alenco*, 201 F.3d at 619. Further, because competitive ETC support is based on the incumbent LEC's costs, rather than on the competitive ETC's own costs, there is no reason to believe—and no record data showing—that support subject to an interim cap would necessarily result in insufficient support levels. Dobson also argues that the cap will violate the universal service principle of predictability because the effects of the cap ''will be driven by factors that are not at all 'predictable'.'' Adoption of the interim cap, however, makes competitive ETC support more predictable, in that it sets an upper, definitive bound on the amount of support available in a state. Moreover, Dobson ignores the fact that, as the court concluded in *Alenco*, the Act's requirement of predictability requires only that the rules governing distribution, not the resulting funding amounts, must be predictable. *Alenco*, 201 F.3d at 623.

15. We are not persuaded by CTIA's argument, citing *Alenco*, that the Act requires the promotion of competition in high-cost areas through the provision of equal per-line support amounts to all carriers. Rather than requiring the use of universal service support to subsidize competition, the court in *Alenco* was concerned with the sustainability of universal service in a competitive environment. Specifically, the court found that ''[t]he Commission therefore is responsible for making the changes necessary to its universal service program to ensure that it survives in the new world of competition.'' *Alenco*, 201 F.3d at 615 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96–45, Report and Order, 62 FR 32861, paras. 1–4, 20 (1997) (*Universal Service First Report and Order*) (stating that the Commission, through its work with the Joint Board, ''ensure[s] that this system is sustainable in a competitive marketplace, thus ensuring that universal service is available at rates that are 'just, unreasonable [sic], and affordable' for all Americans'')). The court stated that the Commission ''must see to it that *both* universal service and competition are realized; one cannot be sacrificed in favor of the other.'' *See Alenco*, 201 F.3d at 615. We therefore find that our action today is not only consistent with, but is supported by, the court's holding in *Alenco*.

16. Similarly, we are not persuaded by Alltel's argument that competitive ETCs and incumbent LECs must receive the same amount of support on a per-line basis. Although Alltel correctly notes that, in upholding the cap on high-cost loop support, the court in *Alenco* ''rejected the premise that [incumbent LEC] revenue flows must be protected at all costs, and thus that any reductions in disbursements needed to prevent undue fund growth must be borne by [competitive ETCs] rather than [incumbent LECs],'' Alltel fails to explain why the court's holding requires equal per-line support for all competitors. Put simply, while the court rejected the idea that any reductions in disbursements necessary to curtail fund growth had to be borne by competitive ETCs and not incumbent LECs, the court did not prohibit the Commission from imposing reductions or limits on competitive ETC disbursements.

17. CTIA argues that adoption of the interim cap would not comport with the court's statement in *Alenco* that ''the program must treat all market participants equally * * * so that the market, and not local or federal government regulators, determines who shall compete for and deliver service to customers.'' The cited language, however, does not require the Commission to continue to provide identical levels of support to all carriers. It merely requires that all ETCs must be eligible to receive support, an unremarkable conclusion given the plain text of the statute.

18. Alltel and CTIA both ignore key aspects of *Alenco*, in which the court expressly found that the Commission must ensure that all *customers* be able to receive affordable basic telecommunications services.

> Competition necessarily brings the risk that some telephone service providers will be unable to compete. The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well. Moreover, excessive funding may itself violate the sufficiency requirements of the Act.

Alenco, 201 F.3d at 620. Nowhere in the court's decision did it require that all *providers* must receive equal per-line support amounts.

19. In arguing that the interim cap would not comport with the identical support rule because it would disburse unequal support per line, Alltel also cites various Commission precedents related to the establishment and implementation of the identical support rule, which, at the time, the Commission found to be consistent with its principle of competitive neutrality. In justifying this portability requirement, both the Joint Board and Commission made clear that they envisioned that competitive ETCs would compete directly against incumbent LECs and try to take existing customers from them. *See Universal Service First Report and Order*, 62 FR 32861, paras. 287, 311; *Federal-State Joint Board on Universal Service*, Recommended Decision, 61 FR 63778, para. 296 (Fed-State Jt. Bd. 1996). The predictions of the Joint Board and the Commission have proven inaccurate, however.

20. First, they did not foresee that competitive ETCs might offer supported services that were not viewed by consumers as substitutes for the incumbent LEC's supported service. Second, wireless carriers, rather than wireline competitive LECs, have received a majority of competitive ETC designations, serve a majority of competitive ETC lines, and have received a majority of competitive ETC support. These wireless competitive ETCs do not capture lines from the incumbent LEC to become a customer's sole service provider, except in a small portion of households. *See 2007 Commercial Mobile Services Report*, 23 FCC Rcd 2241, at para. 246 (citing survey reporting that only approximately 11. 8 percent of U.S. households relied exclusively on wireless phones in 2006). Thus, rather than providing a complete substitute for traditional wireline service, these

wireless competitive ETCs largely provide mobile wireless telephony service in addition to a customer's existing wireline service.

21. This has created a number of serious problems for the high-cost fund, and calls into question the rationale for the identical support rule. Instead of competitive ETCs competing against the incumbent LECs for a relatively fixed number of subscriber lines, the certification of wireless competitive ETCs has led to significant increases in the total number of supported lines. Because the majority of households do not view wireline and wireless services to be direct substitutes, *see Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, WC Docket No. 05–333, Memorandum Opinion and Order, 22 FCC Rcd 5207, 5218, para. 17 (2007) (stating that a majority of presubscribed interexchange customers also subscribe to mobile wireless service); *Commercial Mobile Services Report*, 23 FCC Rcd 2241, at para. 246 (2008) (citing survey reporting that approximately 11. 8 percent of U.S. households relied exclusively on wireless phones in 2006), many households subscribe to both services and receive support for multiple lines, which has led to a rapid increase in the size of the fund. In addition, the identical support rule fails to create efficient investment incentives for competitive ETCs. Because a competitive ETC's per-line support is based solely on the per-line support received by the incumbent LEC, rather than its own network investments in an area, the competitive ETC has little incentive to invest in, or expand, its own facilities in areas with low population densities, thereby contravening the Act's universal service goal of improving the access to telecommunications services in rural, insular and high-cost areas. *See* 47 U.S.C. 254(b)(3). Instead, competitive ETCs have a greater incentive to expand the number of subscribers, particularly those located in the lower-cost parts of high-cost areas, rather than to expand the geographic scope of their network. The Commission is currently considering eliminating the identical support rule. *Identical Support Rule NPRM*, 73 FR 11580.

22. We also find that the Commission's universal service principle of competitive neutrality does not preclude us from adopting an interim, limited cap under existing circumstances. *Universal Service First Report and Order*, 62 FR 32861, paras. 46–52 (subsequent history omitted) (''[W]e define this principle, in the context of determining universal service support, as: COMPETITIVE NEUTRALITY—Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.''). As discussed above, high-cost support has increased by $1. 7 billion—more than 65 percent—from 2001 to 2007. Continued growth at this rate would render the amount of high-cost support unsustainable and could cripple the universal service fund. To avert this crisis, it is necessary to place some temporary restraints on the fastest-growing portion of high-cost support, i.e., competitive ETC support. Moreover, as discussed above, it is not clear that identical support has, in reality, resulted in competitive neutrality. We therefore find that, rather than departing from the principle of competitive neutrality, as a matter of policy, we instead are temporarily prioritizing the immediate need to stabilize high-cost universal service support and ensure a specific, predictable, and sufficient fund. *See* 47 U.S.C. 254(b)(5), (d).

23. Finally, we reject arguments that the cap should not be adopted because it will not be truly interim in nature. The interim cap will remain in place only until the Commission adopts comprehensive, high-cost universal service reform. Thus, we are satisfied that the interim cap's life will be of limited duration.

Cap on Competitive ETC Support Would Not Inhibit Broadband Deployment in Rural America

24. Several commenters argue that the interim cap on competitive ETC support will inhibit the deployment of broadband services. With the exception of GCI, these commenters provide only anecdotal evidence of the possible effect of the interim cap on particular deployments, and do not systematically analyze the effect of the interim cap on broadband deployment. Moreover, although high-cost support for rural incumbent LECs has been capped for many years, that does not appear to have inhibited the deployment of broadband service to areas served by rural incumbent LECs. Indeed, high-cost universal service support may be used to invest in facilities to provide broadband service if those facilities are also necessary to provide voice grade access. *See Rural Task Force Order*, 66 FR 30080, paras. 199–201.

25. In light of the foregoing, we decline to adopt specific requirements for competitive ETCs regarding the provision of broadband Internet access services. Rather, we find that the role of high-cost support mechanisms in promoting broadband deployment is better addressed in a rulemaking of general applicability. In fact, the Commission currently is considering proposals to provide high-cost support for broadband service.

Design and Implementation of the Cap

Operation of the Cap

26. We adopt a cap on competitive ETC support for each state, as recommended by the Joint Board, subject to two limited exceptions described below. A competitive ETC cap applied at a state level will effectively curb growth, but, given a state's role in designating ETCs, will allow a state the flexibility to direct competitive ETC support to the areas in the state that it determines are most in need of such support. An interim, state-based cap on competitive ETC support also will avoid creating an incentive for each state to designate as many new ETCs as possible for the sole purpose of increasing support to that state at the expense of other states, which could occur had we adopted a single, nationwide cap. A state-based cap will require newly-designated competitive ETCs to share funding with other competitive ETCs within the state.

27. Under the state-based cap, support will be calculated using a two-step approach. First, on a quarterly basis, the Universal Service Administrative Company (USAC) will calculate the support each competitive ETC would have received under the existing (uncapped) per-line identical support rule, *see* 47 CFR 54.307, and sum these amounts by state. Second, USAC will calculate a state reduction factor to reduce this amount to the competitive ETC cap amount. Specifically, USAC will compare the total amount of uncapped support to the cap amount for each state. Where the total state uncapped support is greater than the available state cap support amount, USAC will divide the state cap support amount by the total state uncapped amount to yield the state reduction factor. USAC will then apply the state-specific reduction factor to the uncapped amount for each competitive ETC within the state to arrive at the capped level of high-cost support. Where the state uncapped support is less than the available state capped support amount, no reduction will be required.

28. For example, if, in State A, the capped amount is $90 million, and the total uncapped support is $130 million, the reduction factor would be 69.2 percent ($90/$130). In State A, each competitive ETC's uncapped support would be multiplied by 69.2 percent to reduce support to the capped amount. If, in State B, however, the capped amount is $100 million, and the total uncapped support is $95 million, there would be no reduction factor because the uncapped amount is less than the capped amount. Finally, if, in State C the base period capped amount is $0 (i.e., there were no competitive ETCs eligible to receive support in State C in March 2008), then no competitive ETCs would be eligible to receive support in that state during the interim cap. Each quarter, for the duration of the cap, a new reduction factor would be calculated for each state.

29. Some commenters argue that, in states where there currently are no competitive ETCs designated, subsequently designated competitive ETCs will receive no high-cost support while the interim cap remains in place. The Act does not, however, require that all ETCs must receive support, but rather only that carriers meeting certain requirements be *eligible* for support. 47 U.S.C. 214(e)(1); 254(e) (emphasis added). Section 214(e)(1) of the Act states, ''A common carrier designated as an eligible telecommunications carrier * * * shall be *eligible* to receive universal service support in accordance with section 254[.]'' 47 U.S.C. 214(e)(1) (emphasis added). Likewise, section 254(e) of the Act states, ''[O]nly an eligible telecommunications carrier designated under section 214(e) shall be *eligible* to receive specific Federal universal service support.'' 47 U.S.C. 254(e) (emphasis added). This language indicates that designation as an ETC does not automatically entitle a carrier to receive universal service support. *See Universal Service First Report and Order*, 62 FR 32861, para. 137 (''Indeed, the language of section 254(e), which states that 'only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive' universal service support, suggests that a carrier is not automatically entitled to receive universal service support once designated as eligible.''); *Alenco*, 201 F.3d at 620 (''The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*.''). Moreover, in section 254 of the Act, Congress distinguished between those who are merely ''eligible'' to receive support and those who are ''entitled'' to receive benefits. *Compare* 47 U.S.C. 254(e) *with* 47 U.S.C. 254(h)(1)(A) (providing that carriers offering certain services to rural health care providers ''shall be entitled'' to have the difference between the rates charged to health care providers and those charged to other customers in comparable rural areas treated as an offset to any universal service contribution obligation); *see also Transbrasil S.A. Linhas Aereas* v. *Dep't of Transp.*, 791 F.2d 202, 205 (D.C. Cir. 1986) (''[W]here different terms are used in a single piece of legislation, the Court must presume that Congress intended the terms have different meanings.''). We find that Congress's careful delineation demonstrates an intention to ascribe different statutory rights. Accordingly, even if imposition of the interim cap results in no support for some competitive ETCs, this result is not inconsistent with the Act.

30. Moreover, there are advantages to obtaining and maintaining an ETC designation regardless of whether a competitive ETC receives high-cost support. In particular, the ability of competitive ETCs to receive low-income universal service support shows value in obtaining and maintaining ETC designation separate and apart from high-cost support. Indeed, TracFone Wireless, Inc. (TracFone) sought forbearance from section 214(e)(1) of the Act so that it could seek designation as an ETC eligible only to receive universal service Lifeline support. TracFone took this step because ''offering prepaid plans which make wireless service available to low income users * * * has been a critical component of TracFone's business strategy since the company's inception.'' Other ETCs may have similar business strategies. Further, by offering Lifeline and Link Up service, a competitive ETC may attract new subscribers that may not otherwise have taken telephone service. This would increase a competitive ETC's base of subscribers and, consequently, lower its average cost of serving all of its subscribers. Moreover, competitive ETCs may be eligible for separate universal service support at the state level. *See, e.g.*, Kan. Stat. Ann. 66–2008 (2006) (providing for the creation of a Kansas universal service fund (KUSF) and requiring that carriers be designated as an ETC pursuant to section 214(e)(1) of the Act to receive support from the KUSF).

31. We adopt two limited exceptions to the operation of the interim cap. First, consistent with the *ALLTEL-Atlantis Order* and the *AT&T-Dobson Order*, we find it in the public interest to adopt a limited exception to the interim cap if a competitive ETC submits its own costs. *See ALLTEL-Atlantis Order*, 22 FCC Rcd at 19521, paras 9–10; *AT&T-Dobson Order*, 22 FCC Rcd at 20329–30, paras. 70–72. Specifically, a competitive ETC will not be subject to the interim cap to the extent that it files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent LEC.

32. Second, we also adopt a limited exception to the interim cap for competitive ETCs that serve tribal lands or Alaska Native regions (the Covered Locations). We permit competitive ETCs serving Covered Locations to continue to receive uncapped high-cost support for lines served in those Covered Locations. Because many tribal lands have low penetration rates for basic telephone service, we do not believe that competitive ETCs are merely providing complementary services in most tribal lands, as they do generally. *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96–45, Twelfth Report and Order, Memorandum Report and Order, and Further Notice of Proposed Rulemaking, 65 FR 47883, para. 2 (2000) (concluding that ''existing universal service support mechanisms are not adequate to sustain telephone subscribership on tribal lands.'').

33. Participation in this limited exception to the interim cap is voluntary and will be elected by the competitive ETC on a study area by study area basis. Therefore, any competitive ETC that does not or cannot opt into the limited exception, or that does not or cannot opt into the limited exception for a particular Covered Location, will remain subject to the interim cap as described herein. Support for competitive ETCs that do opt into the limited exception will continue to be provided pursuant to § 54.307 of the Commission's rules, except that the uncapped per line support is limited to one payment per each residential account. 47 CFR 54.307. If a competitive ETC serves lines in both Covered Locations and non-Covered Locations (or only Covered Locations), the universal service administrator shall determine the amount of additional support—after application of the interim cap—necessary to ensure that a competitive ETC receives the same per-line support amount as the incumbent LEC for the lines qualifying for the exception.

34. Finally compliance with the terms of this limited exception will be verified through certification and reporting

requirements. Specifically, a competitive ETC seeking to receive high-cost support pursuant to this limited exception must certify the number of lines that meet the limited exception requirements. The competitive ETC also must provide a specific description of how it confirmed that it had met the certification threshold.

35. Even with the total amount of support provided to competitive ETCs being capped, continued growth in competitive ETC lines would have the effect of reducing the amount of interstate access support (IAS) received by incumbent LECs, due to the operation of the formula for calculating IAS. *See* 47 CFR 54.800–54.808. To prevent the implementation of the interim cap on competitive ETC support from having this unintended consequence on incumbent LEC support, we find it necessary to adjust the calculation of IAS for both incumbent LECs and competitive ETCs. Accordingly, we divide IAS into separate pools for incumbent LECs and competitive ETCs and separately cap the amount of IAS support for both types of carriers. The annual amount of IAS available for incumbent LECs shall be set at the amount of IAS that incumbent LECs were eligible to receive in March 2008 on an annual basis. This amount shall be indexed annually for line growth or loss by price cap incumbent LECs. The annual amount of IAS available for competitive ETCs shall be set at the amount of IAS that competitive ETCs were eligible to receive in March 2008 on an annual basis. Subject to these constraints, we direct USAC to calculate and distribute IAS for each pool to eligible carriers consistent with the existing IAS rules.

Length of Time

36. In light of the harm to the sustainability of the universal service fund posed by the dramatic growth of support to competitive ETCs, we find that the cap we adopt today should become effective as soon as possible. The cap will, therefore, commence as of the effective date of this Order.

37. We emphasize that the cap on competitive ETC support that we adopt here is only an interim measure to slow the current explosion of high-cost universal service support while the Commission considers further reform. We remain committed to comprehensive reform of the high-cost universal service support mechanisms. The Commission has three outstanding rulemaking proceedings that consider comprehensive reform of high-cost universal service support. The Commission plans to move forward on adopting comprehensive reform measures in an expeditious manner. The Commission commits to completing a final order on comprehensive reform as quickly as feasible after the comment cycle is completed on the pending *Reform Notices.* We therefore do not believe that a fixed sunset date, as proposed by some commenters, is necessary or provides additional benefit.

Base Period for the Cap

38. Although we adopt the Joint Board's recommendation that the cap on competitive ETC support be set at the level of competitive ETC support actually distributed in each state, rather than set such a cap at the level of support actually distributed in 2006, we find it is more appropriate to set such a cap at the level of support competitive ETCs were eligible to receive during March 2008 on an annualized basis. Specifically, for each state, the annual interim cap shall be set at twelve times the level of support that all competitive ETCs were eligible to receive in that state for the month of March 2008. Using March 2008 data allows use of more recent actual support amounts than 2006. Use of March 2008 as the base period, moreover, will ensure that funding levels will not undermine the expectations underlying competitive ETC investment decisions or result in immediate funding reductions. Further, consistent with our decision to cap competitive ETC support on an interim basis, we find it inappropriate and counterproductive to index the cap to a growth factor.

39. Although the interim cap that we adopt today applies only to the amount of support available to competitive ETCs, it does not restrict the number of competitive ETCs that may receive support. In fact, as part of this Order, we grant, to the extent described in Appendix B, numerous applications for ETC designation currently pending before the Commission. As described in more detail in Appendix B, we find that the applicants have met the Commission's requirements for designation. We also amend an ETC designation as described in Appendix C. These designations, however, do not affect the amount of support available to competitive ETCs, which is limited by the interim cap we adopt in this Order.

Procedural Matters

Final Regulatory Flexibility Analysis

40. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), *See* 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice. Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Notice of Proposed Rulemaking, 72 FR 28936 (2007) (*Notice*). The Commission sought written public comment on the proposals in the *Notice,* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

Need for, and Objectives of, the Proposed Rules

41. On May 1, 2007, the Joint Board recommended that the Commission adopt an interim cap on high-cost universal service support for competitive ETCs to rein in the explosive growth in universal service. *Recommended Decision,* 22 FCC Rcd 8998 (Appendix A). We agree with the Joint Board's assessment that the rapid growth in high-cost support places the federal universal service fund in dire jeopardy. In 2006, the universal service fund provided approximately $4.1 billion per year in high-cost support. In contrast, in 2001, high-cost universal service support totaled approximately $2. 6 billion. In recent years, this growth has been due to increased support provided to competitive ETCs, which receive high-cost support based on the per-line support that the incumbent LECs receive, rather than on the competitive ETCs' own costs. While support to incumbent LECs has been flat, or has even declined since 2003, competitive ETC support, in the six years from 2001 through 2006, has grown from under $17 million to $980 million—an average annual growth rate of over 100 percent. Competitive ETCs received $557 million in high-cost support in the first six months of 2007. Annualizing this amount projects that they will receive approximately $1. 11 billion in 2007. We find that the continued growth of the fund at this rate is not sustainable and would require excessive (and ever growing) contributions from consumers to pay for this fund growth.

42. We conclude that immediate action must be taken to stem the dramatic growth in high-cost support. Therefore, we immediately impose an interim cap on high-cost support provided to competitive ETCs until fundamental comprehensive reforms are adopted to address issues related to the distribution of support and to ensure that the universal service fund will be sustainable for future years. The interim cap that we adopt herein limits the amount of high-cost support that competitive ETCs can receive in the interim period to the amount they were

eligible to receive in March 2008 on an annualized basis.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

43. None.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

44. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules, if adopted. 5 U.S.C. 604(a)(3). The RFA generally defines the term ''small entity'', 5 U.S.C. 601(6), as having the same meaning as the terms ''small business,'' 5 U.S.C. 601(3), ''small organization,'' 5 U.S.C. 601(4), and ''small governmental jurisdiction.'' 5 U.S.C. 601(5). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632). Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. Nationwide, there are a total of approximately 22. 4 million small businesses, according to SBA data. *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at 40 (July 2002). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). Nationwide, as of 2002, there were approximately 1. 6 million small organizations.

45. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, is the data that the Commission publishes in its *Trends in Telephone Service* report. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3, page 5–5 (February 2007) (Trends in Telephone Service). The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, 13 CFR 121. 201, North American Industry Classification System (NAICS) code 517110, Paging, 13 CFR 121. 201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to ''Wireless Telecommunications Carriers (except Satellite),'' NAICS code 517210.), and Cellular and Other Wireless Telecommunications. 13 CFR 21. 201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to ''Wireless Telecommunications Carriers (except Satellite),'' NAICS code 517210.). Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

Wireline Carriers and Service Providers

46. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 15 U.S.C. 632. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

47. *Incumbent LECs.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent LECs. The closest applicable size standard under SBA rules is for ''Wired Telecommunications Carriers.'' Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees, and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

48. *Competitive LECs, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,''* and ''Other Local Service Providers.'' Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category ''Wired Telecommunications Carriers.'' Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers reported that they were engaged in the provision of either competitive LEC or CAP services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees, and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees, and one has more than 1,500 employees. Consequently, the Commission estimates that most competitive LECs, CAPs, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our action.

Wireless Carriers and Service Providers

49. *Wireless Service Providers.* The appropriate size standard for wireless service providers is the category of ''Wireless Telecommunications Carriers (except Satellite).'' Under that standard, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The data necessary to estimate the number of entities in this category has not been gathered since it was adopted in November 2007. Therefore, we will use the earlier, now-superceded categories—''Paging'' and ''Cellular and Other Wireless Telecommunications''—to estimate the number of entities. For the census category of ''Paging,'' Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of ''Cellular and Other Wireless Telecommunications,'' Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

50. *Wireless Telephony.* Wireless telephony includes cellular, personal

communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Wireless Telecommunications Carriers (except Satellite).'' Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. The data necessary to estimate the number of entities in this category has not been gathered since it was adopted in November 2007. Therefore, we will use the earlier, now-superceded categories of ''Cellular and Other Wireless Telecommunications'' to estimate the number of entities. According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 221 of these are small under the SBA small business size standard.

Satellite Service Providers

51. *Satellite Telecommunications and Other Telecommunications.* There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of ''Satellite Telecommunications'' and ''All Other Telecommunications.''

52. The first category of ''Satellite Telecommunications'' ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Under this category, the SBA size standard is $13.5 million or less in aveage annual receipts. For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

53. The second category of ''All Other Telecommunications'' ''comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' The SBA size standard for ''All Other Telecommunications'' is $23.0 million or less in average annual revenues. For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

54. In order to qualify for the exception to the interim cap, some small carriers serving tribal lands or Native Alaskan regions will be required to file certifications that they qualify for the exception. Other small carriers may qualify for an exception if they file data reporting their costs of serving high-cost areas for which they seek the exception to be applied.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

55. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities. *See* 5 U.S.C. 603(c).

56. In adopting the interim cap, the Commission considered several alternatives to minimize the cap's effect on small entites. We adopt an exception to the rule for carriers providing services to tribal lands. We also note that the Commission is examining ways to comprehensively reform federal high-cost universal service. The interim cap that the Commission adopts today is an interim measure that will be replaced by comprehensive reforms which will be developed in the future and which will minimize any economically adverse effect of the cap on small businesses.

Report to Congress

57. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and the FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Paperwork Reduction Act Analysis

58. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995). It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' Small Business Paperwork Relief Act of 2002, Public Law 107–198, 116 Stat. 729 (2002); 44 U.S.C. 3506(c)(4).

59. In this present document, we have assessed the effects of demonstrating compliance with the exception to the interim cap, and find that there may be an increased administrative burden on businesses with fewer than 25 employees. We have taken steps to minimize the information collection burden for small business concerns, including those with fewer than 25 employees. First, we note that compliance with the exception is voluntary—small business concerns are not required to comply with the information collection. In addition, compliance with the exception will be elected by carriers on a study area by study area basis. Carriers need only provide additional information on the study areas for which they elect to rely on the exception to the interim cap.

Congressional Review Act

60. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

61. Accordingly, *it is ordered,* pursuant to the authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, 405, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 214, 218–220, 254, 303(r), 403, 405, and 410, that this Order in CC Docket No. 96–45 and WC Docket No. 05–337 is adopted.

62. *It is further ordered* that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. 214(e)(6), the petitions for eligible telecommunications carrier designation as set forth in Appendix B *are granted, denied, or dismissed without prejudice* to the extent described therein and, pursuant to § 1. 103(a) of the Commission's rules, 47 CFR 1. 103(a), *shall be* effective thirty days after publication in the **Federal Register**, except where redefined service areas require the agreement of a state commission as described therein.

63. *It is further ordered* that, pursuant to the authority contained in section 214(e)(5) of the Communications Act, 47 U.S.C. 214(e)(5), and §§ 54.207(d) and (e) of the Commission's rules, 47 CFR 54.207(d) and (e), the requests to redefine the service areas of the rural telephone companies described in Appendix B, *are granted, denied,* or *granted in part and denied in part* to the extent described therein and subject to the agreement of the relevant state commissions with the Commission's redefinition of the relevant service areas, if not previously redefined as described therein.

64. *It is further ordered* that a copy of this order *shall be* transmitted by the Office of the Secretary to the relevant state commissions and the Universal Service Administrative Company.

65. *It is further ordered* that the petitioners set forth in Appendix B shall submit additional information pursuant to § 54.202(a) of the Commission's rules, 47 CFR 54.202(a).

66. *It is further ordered* that NEP Cellcorp, Inc.'s Motion to Strike is dismissed as moot as described in Appendix B to the Order.

67. *It is further ordered* that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. 214(e)(6), RCC Minnesota, Inc. and RCC Atlantic, Inc.'s ETC designation in New Hampshire is amended as set forth in Appendix C to the Order.

68. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

69. *It is further ordered*, that this Order *shall be effective* thirty days after publication in the **Federal Register**.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–14897 Filed 7–1–08; 8:45 am]

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Proposed Rules

Federal Register
Vol. 73, No. 128
Wednesday, July 2, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2008–0032]

RIN 0579–AC80

Importation of Cooked Pork Skins

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations to allow for the importation of cooked pork skins from regions affected with foot-and-mouth disease, swine vesicular disease, African swine fever, and classical swine fever under certain conditions. We are taking this action after preparing a risk assessment that concluded that the cooking methods examined are sufficient to inactivate the pathogens of concern. This action would relieve restrictions on the importation of cooked pork skins while continuing to protect against the introduction of those diseases of concern.

DATES: We will consider all comments that we receive on or before September 2, 2008.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008&-0032* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0032, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0032.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Karen A. James-Preston, Director, Technical Trade Services—Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of communicable diseases of livestock and poultry. The regulations in §§ 94.4, 94.8, 94.9, and 94.12 contain requirements for the importation of cured or cooked meat and pork and pork products from regions where rinderpest, foot-and-mouth disease (FMD), African swine fever (ASF), classical swine fever (CSF), and swine vesicular disease (SVD) exist.

Currently, the regulations provide that pork and pork products may be imported into the United States from regions where these diseases exist only if they have been cooked or cured as specified in our regulations. Acceptable cooking or curing methods include curing and drying so that the product does not require refrigeration, cooking in a hermetically sealed container so that the final product is shelf-stable, cooking in tubes so the internal temperature of the meat reaches 175 °F (79.4 °C), or, in the case of perishable canned hams, cooking by method other than flash heating to an internal temperature of 156 °F (69 °C). These cooking and curing processes protect the United States against an introduction of the diseases of concern by inactivating the viruses which cause them.

The Animal and Plant Health Inspection Service (APHIS) has received a request from a United States importer for permission to import cooked pork skins (pork rinds) from Brazil, a region affected with FMD, SVD, ASF, and CSF. Such imports are not permitted under our current regulations. However, a risk assessment [1] performed by the Centers for Epidemiology and Animal Health of APHIS' Veterinary Services program indicates that pork skins cooked in the manner described by the requester are not a potential pathway for entry of foreign animal disease agents into the United States. This is because the cooking process is sufficient to deactivate the pathogens in question.

Two methods of cooking pork skins were examined. The first method is a one-step cooking process, during which the pork skins are held in cooking oil that is maintained at a temperature of 237–240 °F (114–116 °C) for at least 80 minutes. Including heating and cooling times, the cooking time for the one-step process is about 2.5 hours. The second is a two-step process in which the pork rinds are dry cooked at 500–750 °F (260–399 °C) for approximately 210 minutes after which they are cooked in hot oil at 220–250 °F (104–121 °C) for an additional 150 minutes. The total cooking time in the two-step process is about 6 hours.

Both these cooking processes exceed the heat inactivation requirement commonly cited in the literature for the four viruses of concern. They also exceed the requirements for cooked meat described in the regulations.

We are, therefore, proposing to amend the regulations in part 94 to allow for the importation of cooked pork skins from regions with FMD, SVD, ASF, and CSF under the conditions described in this proposed rule. Specifically, we would amend the FMD-related provisions in § 94.4, the ASF-related provisions in § 94.8, the CSF-related provisions in § 94.9, and the SVD-related provisions in § 94.12 by adding a new paragraph to each section that authorizes the importation of pork skins

[1] The risk assessment, titled ''Risk Assessment of Pork Rinds from Brazil,'' can be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) or in our reading room. A copy may also be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

if they have been cooked using one of the methods described above. Each of those sections also contains additional requirements that must be met in order for pork or pork products to be imported into the United States from regions where these diseases exist. These additional requirements include provisions that the pork or pork products be processed at an approved facility which is eligible to have its products imported into the United States under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the regulations in 9 CFR part 327, and that shipments of cooked pork or pork products must be accompanied by a certificate issued by an official of the National Government of the region of origin who is authorized to issue the foreign meat inspection certificate required under 9 CFR part 327.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the regulations to allow for the importation of cooked pork skins from regions affected with FMD, SVD, ASF, and CSF under certain conditions. We are taking this action after preparing a risk assessment that concluded that the cooking methods examined are sufficient to inactivate the pathogens of concern. This action would relieve restrictions on the importation of cooked pork skins while continuing to protect against the introduction of those diseases of concern.

Pork rinds are a snack food that is made from deep-fried or microwavable pork rind pellets (cooked pig skins). The size of the pork rind snack manufacturing industry is considered to be relatively small. Available Economic Census data do not provide specific information on the pork rind snack industry. The Census categorizes the pork rind industry with certain other snack foods (excluding potato chips, corn chips, and related products) under ''other snack food manufacturing,'' and the product classification code is 3119197.[2] As table 1 shows, the industry is composed of a relatively small number of establishments. On average, these establishments employ fewer than 100 employees and therefore most, if not all, of the establishments can be considered to be small entities.[3]

TABLE 1.—SNACK FOOD MANUFACTURING, EXCLUDING POTATO CHIPS, CORN CHIPS, AND RELATED PRODUCTS, 2002

Number of establishments	Number of employees	Payroll ($ million)	Total cost of materials ($ million)	Total value of shipments ($ million)
47	4,284	$131	$365	$959

Source: 2002 Economic Census (*http://www.census.gov/prod/ec02/ec0231i311919.pdf*).

Although no clear-cut method exists to disaggregate the pork-rind snack manufacturers from the other snack manufacturers in the Census data, we can use available sales information for pork-rind snack food to approximate the size of this segment of the industry. Currently two trade associations keep track of pork-rind snack sales: The Snack Food Association of Alexandria, VA, reported sales $562 million (−21.6 percent)[4] and Information Resources, Inc. of Chicago, IL, reported sales of $98 million (−16.8 percent).[5]

Comparing these trade association data to the $959 million shipment value reported in the Census data for ''other snack food manufacturing,'' sales by the pork-rind snack manufacturers may represent as much as one-half of sales for this product category. In terms of the sales trend, it is notable that both trade associations reported about 20 percent declines in sales from the previous year. The slowdown in sales may at least partially reflect a shift in consumers' orientation away from the high-protein/low-carbohydrate diet that seems to have peaked in 2004.

Pork Rind Pellet Manufacturers

Pork rind pellets are made from cooked pork skins and are the main material used in making pork rind snacks. The number and size of the pork rind pellet manufacturers (including manufacturers of pork cracklings[6]) are relatively small. Only 17 establishments comprise this industry, and they had a total shipment value in 2002 of $196 million, as shown in table 2.

TABLE 2.—PORK RIND PELLET MANUFACTURERS, 2002

Product code	Product description	Number of companies with shipments of $100,000 or more	Shipment value ($ million)	Estimated shipment volume[1]
311611R121	Pork rind pellets, including pork cracklings, made in slaughtering plants.	5	$45	155.9 million pounds (70,715 metric tons).
311612A441	Pork rind pellets, including pork cracklings, made from purchased carcasses.	12	151	56 million pounds (91,580 metric tons).

[1] Although shipment volumes for pork rind pellets are not available in the 2002 Census data, the 1997 Census data indicate that 123.7 million pounds were shipped for product code 311612A441, with a total shipment value of $130 million. The 2002 figures are calculated based on this information.

[2] The products included within this code are other chips, sticks, hard pretzels, bacon rinds, popcorn (except candied), etc., excluding crackers, soft pretzels, and nuts.

[3] The U.S. Small Business Administration (SBA) defines establishments engaged in other snack food manufacturing (North American Industry Classification System code 311919) as small if their employees number no more than 500.

[4] Sales in 2005, which includes all distribution channels. Percentage shows the change from previous year.

[5] Total supermarket, drug store, and mass merchandising sales for the 52 weeks ending May 21, 2006, excluding Wal-Mart. Percentage shows the change from previous year.

[6] Cracklings are produced from pellets—cooked pork skins—that are thicker and meatier than rinds.

Source: 2002 Economic Census.

U.S. Import and Export of Pork Rind Products

Trade data [7] specific to pork rinds are not available; instead, three harmonized tariff schedule (HTS) data for the edible offal of swine are examined and summarized.[8] [9] Tables 3 and 4 summarize the import and export trend for these three HTS codes.[10]

The United States has imported a relatively small volume of edible offal of swine, including pork rinds, at an average of 7,000 metric tons annually with a value of $12 million over the past 5 years. Although the import of swine offal peaked in 2005 and has declined since, U.S. exports are relatively stable. The United States exported, on an average, about 24,000 metric tons with an average value of $24 million, and the United States has been a consistent net exporter of the edible offal of swine over the past 5 years.

TABLE 3.—U.S. IMPORTS OF EDIBLE OFFAL OF SWINE, FROZEN, PREPARED, OR PRESERVED

Country	2002		2003		2004		2005		2006	
	Million dollars	Metric tons	Million dollars	Metric tons	Million dollars	Metric tons	Million dollars	Metric tons	Million dollars	Metric tons
Canada	$2.9	2,901	$4.3	3,553	$10.5	4,481	$7.0	6,635	$5.7	6,274
Denmark	8.1	2,183	6.8	2,281	7.5	1,893	2.1	2,247	2.1	1,127
Mexico	0.0	0	1.1	0	0.6	108	0.0	79	0.0	0
Others	0.3	177	0.6	144	0.6	102	0.4	174	0.0	27
Total	11.3	5,261	12.8	5,978	19.2	6,584	9.5	9,135	7.8	7,428

Source: U.S. International Trade Commission, HTS 0206490000, 0206490050, 1602494000.

TABLE 4.—U.S. EXPORTS OF EDIBLE OFFAL OF SWINE, FROZEN, PREPARED, OR PRESERVED

Country	2002		2003		2004		2005		2006	
	Million dollars	Metric tons	Million dollars	Metric tons	Million dollars	Metric tons	Million dollars	Metric tons	Million dollars	Metric tons
Mexico	$10.1	15, 405	$11.0	16, 747	$19.4	24,325	$18.3	21,235	$16.5	22,078
Japan	9.4	3,102	3.3	1,410	0.9	272	1.4	435	4.4	1,494
Korea	0.5	358	1.6	776	1.8	848	2.2	1,029	3.0	1,330
Hong Kong	2.3	1,097	1.4	679	1.2	353	1.1	261	1.5	330
Others	3.8	2,518	2.3	2,720	1.1	1,584	1.1	853	0.8	695
Total	26.1	22,120	19.6	22,332	24.4	27,382	24.1	23,813	26.2	25,927

Source: U.S. International Trade Commission.

Export of Pork Rind Products From Brazil

Two HTS categories that include pork skins are used to examine the status of Brazilian exports of pork rinds: 160249 (Meat, Meat Offal or Mixtures of Swine, Prepared or Preserved, Nesoi [11]) and 020649 (Offal of Swine Except Livers, Edible, Frozen).

[7] Source: U.S. International Trade Commission Interactive Tariff and Trade Dataweb.

[8] HTS 020649—Edible offal of swine, frozen: Other; HTS 0206490050—Edible offal of swine, frozen, pork rind (Note: This classification is no longer available in the 2007 HTS); HTS 1602494000—Other prepared or preserved meat, meat offal, or blood of swine: Other, not containing cereals or vegetables, other.

[9] Of those, only one HTS is specifically for pork rind (frozen). The other two include other edible offal of frozen, prepared, or preserved swine.

[10] ''Landed Duty-Paid Value,'' which is the sum of the cost, insurance, and freight (CIF) value plus calculated duties, is used for the trade data.

[11] Not elsewhere specified or indicated.

TABLE 5.—EXPORT OF SWINE OFFAL FROM BRAZIL

Country	2003			2004			2005			
	Million dollars	Metric tons	Per metric ton	Million dollars	Metric tons	Per metric ton	Million dollars	Metric tons	Per metric ton	% share of volume
Hong Kong	$7.2	9.199	781.9	$9.5	10.347	916.9	$15.2	14,537	1,046.9	65.2
Russia	3.4	4,621	725.3	2.2	2,897	750.1	4.1	4,689	876.8	21.0
Others	2.3	3,882	602.7	3.3	3,493	942.7	3.0	3,064	960.1	13.7
World Total	12.9	17,702	727.8	15.0	16,737	893.4	22.3	22,290	999.2	100

Source: U.S. Census Bureau, as reported by Global Trade Information Services, Inc.

Brazil exports a relatively small amount of swine offal products. On an average, it exports about 19,000 metric tons annually with a total value of $17 million. Hong Kong is by far the largest buyer of Brazilian swine offal, accounting for almost two-thirds of total exports. Russia is the second largest buyer; however, its imports are limited to frozen swine offal (HTS 0206491).

In terms of the aggregate world export of swine offal products, Brazil is ranked around tenth in both HTS categories with its share accounting for about 1 percent of world trade.[12]

Expected Economic Impact

The expected impact of the proposed rule on the U.S. economy is illustrated under two scenarios: 3 million pounds (1,361 metric tons) and 4 million pounds (1,814 metric tons) of pork rind pellets imported from Brazil.[13] These scenarios reflect the initial plan of the U.S. importer who requested the proposed rule.

Table 6 summarizes the estimated price effects and impacts for U.S. producers and consumers under these two scenarios, using a nonspatial, partial equilibrium welfare model. The changes are minor; the model estimates that the net welfare benefit would be about $19,000 under the first scenario (3 million pounds imported) and $30,000 under the second scenario (4 million pounds imported). These welfare measures reflect a reduction in domestic production that would be more than offset by an increase in consumption. The changes in domestic production and consumption would be less than 1 percent. It is, therefore, safely assumed that the proposed regulation would not have a significant economic impact on small entities in the pork rind industry. APHIS welcomes information that the public may provide on the status of the pork rind manufacturing industry and other related information that could be used to further evaluate the impact of the proposed rule.

TABLE 6.—ESTIMATED IMPACT ON THE U.S. ECONOMY OF PORK OFFAL IMPORTS FROM BRAZIL

	Pork rind pellets imported from Brazil	
	1,361 metric tons (3 million pounds)	1,814 metric tons (4 million pounds)
Change in U.S. consumption, metric ton	680.8	840.8
Change in U.S. production, metric ton	−730.2	−973.2
Change in price of pork rind pellets, dollars per metric ton	−$17.08	−$22.76
Change in consumer welfare, thousand dollars	$1,577	$2,104
Change in annual net welfare, thousand dollars	$19	$30

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

[12] Top exporters of HTS 020649 in 2005 were the United States (18 percent share), Germany (16 percent), Canada (13 percent), and Denmark (11 percent). For HTS 160249, top exporters were China (25 percent), Denmark (14 percent), Germany (12 percent), and the United States (8 percent).

[13] We used a nonspatial, partial equilibrium welfare model to quantify the economic effects of the proposed rule. In addition to the importer's plan to import 3 to 4 million pounds, the price and quantity data explained in previous sections are used as inputs.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. Section 94.4 is amended as follows:

a. In paragraph (b)(7), by removing the citation ''§ 94.4(b)(4) or (b)(5)'' and adding the words ''paragraph (b)(4) or (b)(5) of this section'' in its place.

b. By redesignating paragraphs (b)(8) and (b)(9) as paragraphs (b)(9) and (b)(10), respectively, and adding a new paragraph (b)(8) to read as set forth below.

c. In newly redesignated paragraph (b)(9)(ii), by removing the citation ''(b)(8)(i)'' and adding the citation ''(b)(9)(i)'' in its place.

§ 94.4 Cured or cooked meat from regions where rinderpest or foot-and-mouth disease exists.

* * * * *

(b) * * *

(8) *Pork rind pellets (pork skins).* Pork rind pellets (pork skins) must be cooked in one of the following ways:

(i) *One-step process.* The pork skins must be cooked in oil for at least 80 minutes when oil temperature is consistently maintained at a minimum of 114 °C.

(ii) *Two-step process.* The pork skins must be dry-cooked at 260 °C for approximately 210 minutes after which they must be cooked in hot oil (deep-fried) at 104 °C for an additional 150 minutes.

* * * * *

3. Section 94.8 is amended as follows:

a. By redesignating paragraph (a)(4) as paragraph (a)(5), and by adding a new paragraph (a)(4) to read as set forth below.

b. In paragraph (a)(3)(i), by removing the citation ''(a)(4)'' and adding the words ''(a)(5) of this section'' in its place.

§ 94.8 Pork and pork product from regions where African swine fever exists or is reasonably believed to exist.

* * * * *

(a)* * *

(4) The pork product is pork rind pellets (pork skins) that were cooked in one of the following ways in an establishment that meets the requirements in paragraph (a)(5) of this section:

(i) *One-step process.* The pork skins must be cooked in oil for at least 80 minutes when oil temperature is consistently maintained at a minimum of 114 °C.

(ii) *Two-step process.* The pork skins must be dry-cooked at a minimum of 260 °C for approximately 210 minutes after which they must be cooked in hot oil (deep-fried) at a minimum of 104 °C for an additional 150 minutes.

* * * * *

4. Section 94.9 is amended as follows:

a. By adding a new paragraph (c)(1)(iv) to read as set forth below.

b. In paragraph (c)(2), by removing the citation ''(c)(1)(ii) or (iii)'' and adding the citation ''(c)(1)(ii), (iii), or (iv)'' in its place.

c. In paragraph (c)(3), by removing the citation ''(c)(1)(ii) or (iii)'' both places it occurs and adding the words ''(c)(1)(ii), (iii), or (iv) of this section'' in its place.

§ 94.9 Pork and pork products from regions where classical swine fever exists.

* * * * *

(c)* * *

(1)* * *

(iv) Pork rind pellets (pork skins) originating in regions where classical swine fever is known to exist may be imported into the United States provided they have been cooked in one of the following ways:

(A) *One-step process.* The pork skins must be cooked in oil for at least 80 minutes when oil temperature is consistently maintained at a minimum of 114 °C.

(B) *Two-step process.* The pork skins must be dry-cooked at a minimum of 260 °C for approximately 210 minutes after which they must be cooked in hot oil (deep-fried) at a minimum of 104 °C for an additional 150 minutes.

* * * * *

5. In § 94.12, a new paragraph (b)(1)(vi) is added to read as follows:

§ 94.12 Pork and pork products from regions where swine vesicular disease exists.

* * * * *

(b) * * *

(1) * * *

(vi) Pork rind pellets (pork skins) must be cooked in one of the following ways:

(A) *One-step process.* The pork skins must be cooked in oil for at least 80 minutes when oil temperature is consistently maintained at a minimum of 114 °C.

(B) *Two-step process.* The pork skins must be dry-cooked at a minimum of 260 °C for approximately 210 minutes after which they must be cooked in hot oil (deep-fried) at a minimum of 104 °C for an additional 150 minutes.

* * * * *

Done in Washington, DC, this 26th day of June 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–15014 Filed 7–1–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0730; Directorate Identifier 2008–NM–055–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400, DHC–8–401, and DHC–8–402 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

All DHC–8 Series 400 aircraft have had a spoiler fuselage cable disconnect sensing system installed in production. Subsequently it was discovered that, in the event of a spoiler fuselage cable disconnect, only the ROLL SPLR INBD HYD caution light will be illuminated until the aircraft speed decreases below 165 kts [knots], at which time the ROLL SPLR OUTBD HYD caution light will also be illuminated. In the event of a spoiler fuselage cable disconnect in association with the existing indications described above, the reduction in roll authority could result in increased pilot workload during approach and landing.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by August 1, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0730; Directorate Identifier 2008–NM–055–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2008–13, dated February 14, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> All DHC–8 Series 400 aircraft have had a spoiler fuselage cable disconnect sensing system installed in production. Subsequently it was discovered that, in the event of a spoiler fuselage cable disconnect, only the ROLL SPLR INBD HYD caution light will be illuminated until the aircraft speed decreases below 165 kts [knots], at which time the ROLL SPLR OUTBD HYD caution light will also be illuminated. In the event of a spoiler fuselage cable disconnect in association with the existing indications described above, the reduction in roll authority could result in increased pilot workload during approach and landing.
>
> Modsums 4–110066 and 4–126356 (each applicable to a different batch of aircraft serial numbers) have been issued to rework the sensing circuit caution light indication to ensure that it is consistent for spoiler fuselage cable disconnects above and below 165 kts. Modsum 4–126356 has been installed in production on aircraft serial numbers 4130 and subsequent.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 84–27–33, dated June 6, 2007; and Service Bulletin 84–27–28, Revision B, dated September 25, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 20 products of U.S. registry. We also estimate that it would take about 10 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $2,339 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $62,780, or $3,139 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2008–0730; Directorate Identifier 2008–NM–055–AD.

Comments Due Date

(a) We must receive comments by August 1, 2008.

Affected ADs

(b) None.

Applicability

(c) Bombardier Model DHC–8–400, DHC–8–401 and DHC–8–402 airplanes, serial numbers 4003, 4004, 4006, and 4008 through 4129, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

All DHC–8 Series 400 aircraft have had a spoiler fuselage cable disconnect sensing system installed in production. Subsequently it was discovered that, in the event of a spoiler fuselage cable disconnect, only the ROLL SPLR INBD HYD caution light will be illuminated until the aircraft speed decreases below 165 kts [knots], at which time the ROLL SPLR OUTBD HYD caution light will also be illuminated. In the event of a spoiler fuselage cable disconnect in association with the existing indications described above, the reduction in roll authority could result in increased pilot workload during approach and landing.

Modsums 4–110066 and 4–126356 (each applicable to a different batch of aircraft serial numbers) have been issued to rework the sensing circuit caution light indication to ensure that it is consistent for spoiler fuselage cable disconnects above and below 165 kts. Modsum 4–126356 has been installed in production on aircraft serial numbers 4130 and subsequent.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) For airplanes with serial numbers 4003, 4004, 4006, and 4008 through 4094: Within 6,000 flight hours after the effective date of this AD, modify the spoiler cable disconnect sensing circuit by incorporating Modsum 4–110066 in accordance with Bombardier Service Bulletin 84–27–33, dated June 6, 2007.

(2) For airplanes with serial numbers 4095 through 4129: Within 6,000 flight hours after the effective date of this AD, modify the spoiler cable disconnect sensing circuit by incorporating Modsum 4–126356 in accordance with Bombardier Service Bulletin 84–27–28, Revision B, dated September 25, 2007.

(3) Installations of Modsum 4–126356 accomplished before the effective date of this AD according to Bombardier Service Bulletin 84–27–28, dated October 2, 2006; or Revision A, dated April 30, 2007; are considered acceptable for compliance with the corresponding action specified in this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2008–13, dated February 14, 2008; and Bombardier Service Bulletins 84–27–33, dated June 6, 2007; and 84–27–28, Revision B, dated September 25, 2007; for related information.

Issued in Renton, Washington, on June 24, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14964 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0676; Directorate Identifier 2007–NM–280–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Service experience has shown that heavy MLG (main landing gear) shimmy vibration can occur due to faulty/empty dampers or due to excessive free play in the T/L (torque link) apex joint. In several cases this shimmy vibration resulted in a MLG main fitting failure * * * finally resulting in a collapse of the MLG causing extensive damage to the wingtip, aileron and flaps. * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by August 1, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–

30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0676; Directorate Identifier 2007–NM–280–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the aviation authority for the Netherlands, has issued Dutch Airworthiness Directive NL–2007–001, dated February 26, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Service experience has shown that heavy MLG (main landing gear) shimmy vibration can occur due to faulty/empty dampers or due to excessive free play in the T/L (torque link) apex joint. In several cases this shimmy vibration resulted in a MLG main fitting failure. In those cases where only the upper torque link attachment lug failed the damage to the aircraft was limited. In all other cases the MLG main fitting cracked, finally resulting in a collapse of the MLG causing extensive damage to the wingtip, aileron and flaps. To prevent the collapse of the MLG, Messier-Dowty has designed an upper torque link fuse pin with a static strength lower than the demonstrated strength of the MLG main fitting. In case of a heavy shimmy vibration the upper torque link fuse pin will fail before the main fitting. Therefore the installation of an upper torque link fuse pin will protect the LH and RH (left- and right-hand) MLG main fitting against extreme shimmy loads and thus against a MLG main fitting failure and a MLG collapse. Since an unsafe condition has been identified that may exist or develop on aircraft of the same type design this Airworthiness Directive requires the modification of the MLG by replacing the upper torque link pin with a new fuse pin.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF100–32–148, Revision 1, dated February 26, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 2 products of U.S. registry. We also estimate that it would take about 15 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,400, or $1,200 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Fokker Services B.V.: Docket No. FAA–2008–0676; Directorate Identifier 2007–NM–280–AD.

Comments Due Date

(a) We must receive comments by August 1, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Model F.28 Mark 0070 and F.28 Mark 0100, serial numbers 11244 thru 11585, certificated in any category, equipped with Messier-Dowty main landing gears.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Service experience has shown that heavy MLG (main landing gear) shimmy vibration can occur due to faulty/empty dampers or due to excessive free play in the T/L (torque link) apex joint. In several cases this shimmy vibration resulted in a MLG main fitting failure. In those cases where only the upper torque link attachment lug failed the damage to the aircraft was limited. In all other cases the MLG main fitting cracked, finally resulting in a collapse of the MLG causing extensive damage to the wingtip, aileron and flaps. To prevent the collapse of the MLG, Messier-Dowty has designed an upper torque link fuse pin with a static strength lower than the demonstrated strength of the MLG main fitting. In case of a heavy shimmy vibration the upper torque link fuse pin will fail before the main fitting. Therefore the installation of an upper torque link fuse pin will protect the LH and RH (left- and right-hand) MLG main fitting against extreme shimmy loads and thus against a MLG main fitting failure and a MLG collapse. Since an unsafe condition has been identified that may exist or develop on aircraft of the same type design this Airworthiness Directive requires the modification of the MLG by replacing the upper torque link pin with a new fuse pin.

Actions and Compliance

(f) Within the applicable compliance time specified in paragraphs (f)(1) and (f)(2) of this AD, unless already done, do the following actions.

(1) For Messier-Dowty MLG in a pre-mod Messier-Dowty Service Bulletin F100–32–050 configuration: Within 12 months after the effective date of this AD, replace the upper torque link pin with a new fuse pin in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–148, Revision 1, dated February 26, 2007.

(2) For Messier-Dowty MLG in a post-mod Messier-Dowty Service Bulletin F100–32–050 configuration: Within 30 months after the effective date of this AD, replace the upper torque link pin with a new fuse pin in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–148, Revision 1, dated February 26, 2007.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The MCAI references the original version of the service bulletin or a later approved version. The original version of the service bulletin specifies to use an incorrect part number. This AD refers to Revision 1 of the service bulletin.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Dutch Airworthiness Directive NL–2007–001, dated February 26, 2007, and Fokker Service Bulletin SBF100–32–148, Revision 1, dated February 26, 2007, for related information.

Issued in Renton, Washington, on June 24, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14969 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0731; Directorate Identifier 2008–NM–058–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Boeing Model 747 series airplanes. The existing AD currently requires repetitive detailed inspections of the aft pressure bulkhead for indications of ''oil cans'' and previous oil can repairs, and corrective actions, if necessary. An oil can is an area on a pressure dome web that moves when pushed from the forward side. This proposed AD would reduce the compliance time for the initial detailed inspection and clarify the applicability. This proposed AD results from a report that cracks in oil-canned areas were found during an inspection of the aft pressure bulkhead. We are proposing this AD to detect and correct the propagation of fatigue cracks in the vicinity of oil cans on the web of the aft pressure bulkhead, which could result in rapid decompression of the airplane and overpressurization of the tail section, and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by August 18, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0731; Directorate Identifier 2008–NM–058–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On July 30, 2004, we issued AD 2004–16–09, amendment 39–13765 (69 FR 48133, August 9, 2004), for all Boeing Model 747 series airplanes. That AD requires repetitive detailed inspections of the aft pressure bulkhead for indications of ''oil cans'' and previous oil can repairs, and corrective actions, if necessary. An oil can is an area on a pressure dome web that moves when pushed from the forward side. That AD resulted from a report indicating that a 2.1-inch long crack in the web of the aft pressure bulkhead at the perimeter of an ''oil can'' was found on a Model 747SR series airplane. We issued that AD to detect and correct the propagation of fatigue cracks in the vicinity of oil cans on the web of the aft pressure bulkhead, which could result in rapid decompression of the airplane and overpressurization of the tail section, and consequent loss of control of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2004–16–09, we received a report that 9 cracks (up to 0.4-inch long in 2 oil-canned areas) were found during an inspection on the aft pressure bulkhead of a Model 747–200F series airplane with about 21,000 total flight cycles. Boeing recommends reducing the initial inspection threshold (required in paragraph (b) of AD 2004–16–09) from 30,000 total flight cycles to 20,000 total flight cycles.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2482, Revision 1, dated February 21, 2008. The service bulletin describes procedures that are the same as in Boeing Alert Service Bulletin 747–53A2482, dated October 3, 2002, except for a reduction in a compliance time and some editorial changes. Revision 1 of the service bulletin also specifies contacting Boeing for repair data if any crack is found during a detailed inspection of any previous ''oil can'' repair.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2004–16–09 and would retain the requirements of the existing AD. This proposed AD would also require accomplishing the actions specified in the service bulletin described previously at a reduced threshold, except as discussed under ''Differences Between the Proposed AD and Revision 1 of the Service Bulletin.''

Differences Between the Proposed AD and Revision 1 of the Service Bulletin

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

We have revised paragraph (g) of AD 2004–16–09 to allow repairs in accordance with data that conforms to an airplane's type certificate and that are approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make such findings.

Change to Existing AD

This proposed AD would retain all requirements of AD 2004–16–09. Since AD 2004–16–09 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2004–16–09	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (f).
paragraph (b)	paragraph (g).
paragraph (c)	paragraph (h).
paragraph (d)	paragraph (i).
paragraph (e)	paragraph (j).
paragraph (f)	paragraph (k).
paragraph (g)	paragraph (l).

The cost information specified in AD 2004–16–09 inadvertently contained information on on-condition inspections. The cost information, below, has been revised to state only the work hours necessary for the initial and repetitive inspections specified in paragraph (g) of this proposed AD.

Costs of Compliance

There are about 917 airplanes of the affected design in the worldwide fleet.

This proposed AD would affect about 165 airplanes of U.S. registry.

The actions that are required by AD 2004–16–09 and retained in this proposed AD take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the currently required actions to the U.S. operators is $26,400, or $160 per airplane, per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13765 (69 FR 48133, August 9, 2004) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2008–0731; Directorate Identifier 2008–NM–058–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 18, 2008.

Affected ADs

(b) This AD supersedes AD 2004–16–09.

Applicability

(c) This AD applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report that cracks in oil-canned areas were found during an inspection of the aft pressure bulkhead. We are issuing this AD to detect and correct the propagation of fatigue cracks in the vicinity of oil cans on the web of the aft pressure bulkhead, which could result in rapid decompression of the airplane and overpressurization of the tail section, and consequent loss of control of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Note 1: This AD refers to certain portions of a Boeing service bulletin for inspections and repair information. In addition, this AD specifies requirements beyond those included in the service bulletin. Where the AD and the service bulletin differ, the AD prevails.

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2482, dated October 3, 2002; or Boeing Alert Service Bulletin 747–53A2482, Revision 1, dated February 21, 2008. After the effective date of this AD, Revision 1 must be used.

Requirements of AD 2004–16–09, With Reduced Threshold

Initial and Repetitive Inspections

(g) At the earlier of the times specified in paragraphs (g)(1) and (g)(2) of this AD, perform a detailed inspection of the aft pressure bulkhead for indications of oil cans and previous oil can repairs, in accordance with the service bulletin.

(1) Prior to the accumulation of 30,000 total flight cycles, or within 1,000 flight cycles after September 13, 2004 (the effective date of AD 2004–16–09), whichever is later.

(2) Prior to the accumulation of 20,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

Note 2: For the purposes of this AD, a detailed inspection is ''an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirrors, magnifying lenses, etc. may be necessary. Surface cleaning and elaborate procedures may be required.''

(h) If no indication of an oil can is found and no indication of a previous oil can repair is found during the detailed inspection required by paragraph (g) of this AD, repeat the detailed inspection thereafter at intervals not to exceed 2,000 flight cycles.

Indication of Oil Can

(i) If any indication of an oil can is found during the detailed inspection required by paragraph (g) or (h) of this AD, before further flight, perform an eddy current inspection of the web around the periphery of the oil can indication for cracks, as shown in Figure 3 of the service bulletin.

(j) If no crack is found during the eddy current inspection required by paragraph (i) of this AD, do the actions specified in paragraph (j)(1) or (j)(2) of this AD, as applicable.

(1) For the oil can that meets the allowable limits specified in the service bulletin: Repeat the eddy current inspection specified in paragraph (i) of this AD thereafter at intervals not to exceed 1,000 flight cycles. As an option, repair the oil can in accordance with paragraph (j)(2) of this AD.

(2) For the oil can that does not meet the allowable limits specified in the service bulletin: Before further flight, repair the oil can in accordance with the service bulletin. If the repair eliminates the oil can, accomplishment of this repair constitutes terminating action for the repetitive eddy current inspection requirements of paragraph (j)(1) of this AD for that location only. However, the repetitive detailed inspection required by paragraph (h) of this AD is still required. If any oil can remains after the repair, repeat the eddy current inspection specified in paragraph (i) of this AD thereafter at intervals not to exceed 1,000 flight cycles.

Indication of Previous Oil Can Repairs

(k) If any previous oil can repair is found during the detailed inspection required by paragraph (g) or (h) of this AD, before further flight, do a detailed inspection of the web for cracks and oil cans, as shown in Figure 4 or Figure 5 of the service bulletin, as applicable.

(1) If no crack and no oil can are found, repeat the detailed inspection in accordance with paragraph (h) of this AD.

(2) If any oil can is found, before further flight, do the eddy current inspection for cracks, as shown in Figure 3 of the service bulletin. If no crack is found during the eddy current inspection required by this paragraph, do the actions specified in paragraph (j)(1) or (j)(2) of this AD, as applicable, at the time specified in the applicable paragraph.

Repair of Cracks

(l) If any crack is found during any inspection required by this AD, before further flight, repair in accordance with the service bulletin. If any crack or damage exceeds limits specified in the service bulletin and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings; or using a method approved in accordance with the procedures specified in paragraph (n) of this AD. For a repair method to be approved, the approval must specifically reference this AD.

New Requirements of This AD

(m) As of the effective date of this AD, if any crack or damage is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–53A2482, Revision 1, dated February 21, 2008, specifies to contact Boeing for appropriate action (repair data): Before further flight, repair the crack or damage using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

(4) AMOCs approved previously in accordance with AD 2004–16–09 are not approved as AMOCs for the corresponding provisions of paragraph (g) of this AD. They are approved as AMOCs for the corresponding provisions of paragraphs (h), (i), (j), (k), (l), and (m) of this AD.

Issued in Renton, Washington, on June 24, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14974 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0675; Directorate Identifier 2007–NM–192–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and Mark 0100 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Fokker Model F.28 Mark 0070 and 0100 airplanes. The existing AD currently requires a one-time inspection of the main landing gear (MLG) main fitting for cracks, and repair if necessary. The existing AD also currently requires installing a placard and revising the airplane flight manual to include procedures to prohibit the application of brakes during backward movement of the airplane. This proposed AD would require repetitive eddy current inspections of the MLG main fitting and rework before further flight as applicable. This proposed AD results from reports that a final solution eliminating the cause of the crack initiation mechanism is not yet available and that repetitive inspections are necessary. We are proposing this AD to detect and correct cracks in the MLG main fitting, which could result in reduced structural integrity of the MLG main fitting.

DATES: We must receive comments on this proposed AD by August 1, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0675; Directorate Identifier 2007–NM–192–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On March 10, 2006, we issued AD 2006–06–07, amendment 39–14516 (71 FR 14363, March 22, 2006), for certain Fokker Model F.28 Mark 0070 and Mark 0100 airplanes. That AD requires inspecting the main landing gear (MLG) main fitting for cracks, and repairing if necessary. That AD also requires installing a placard and revising the airplane flight manual to include procedures to prohibit the application of brakes during backward movement of the airplane. That AD resulted from a report that an MLG main fitting failed on an airplane that was braking while moving backward. We issued that AD to detect and correct cracks in the MLG main fitting, which could result in reduced structural integrity of the MLG main fitting.

Actions Since Existing AD Was Issued

Since we issued AD 2006–06–07, we received reports from The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, that a final solution eliminating the cause of the crack initiation mechanism is not yet available. Therefore, the inspection required by AD 2006–06–07 must now be done repetitively, until a final solution is developed to adequately address the identified unsafe condition of this AD.

Relevant Service Information

Messier-Dowty has issued Service Bulletin F100–32–111, dated December 20, 2005. The service bulletin describes procedures for doing a repetitive eddy current inspection of the MLG main fitting for cracks, and reworking the MLG main fitting as applicable. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA–NL mandated the service information and issued airworthiness directive NL–2006–003, dated February 7, 2006, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Determination and Requirements of the Proposed AD

These airplanes are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. We have examined the CAA–NL's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2006–06–07 and would retain the requirements of the existing AD. This proposed AD would also require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Bulletin.''

Differences Between the Proposed AD and the Service Bulletin

Operators should note that, unlike the procedures described in the referenced Messier-Dowty Service Bulletin F100–32–111, dated December 20, 2005, the proposed AD would not permit further flight with any cracks in the MLG main fitting. Due to the safety implications and consequences of such cracking operators must repair all cracked MGL main fittings before further flight.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection (required by AD 2006–06–07).	2	$80	None	$160	11	$1,760
AFM Revision and Placard Installation (required by AD 2006–06–07).	1	80	None	80	11	880
Inspection (new proposed action).	6	80	$540 ($270 per fitting)	1,020	12	12,240

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14516 (71 FR 14363, March 22, 2006) and adding the following new airworthiness directive (AD):

Fokker: Docket No. FAA–2008–0675; Directorate Identifier 2007–NM–192–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 1, 2008.

Affected ADs

(b) This AD supersedes AD 2006–06–07.

Applicability

(c) This AD applies to Fokker Model F.28 Mark 0070 and Mark 0100 airplanes, certificated in any category, equipped with Messier-Dowty main landing gears (MLGs).

Unsafe Condition

(d) This AD results from reports that a final solution eliminating the cause of the crack initiation mechanism is not yet available. We are issuing this AD to detect and correct cracks in the main landing gear (MLG) main fitting, which could result in reduced structural integrity of the MLG main fitting.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2006–06–07

Airplane Flight Manual (AFM) Revision and Placard Installation

(f) Within 14 days after April 26, 2006 (the effective date of AD 2006–06–07), amend the Limitations section of the Fokker F.28 AFM to prohibit application of brakes during backward movement of the airplane. This may be done by inserting a copy of this AD in the AFM.

Note 1: When a statement to prohibit application of brakes during backward movement of the airplane has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(g) Within 14 days after April 26, 2006, affix a placard on the pedestal, next to the parking brake handle, having the following wording: ''APPLICATION OF BRAKES DURING BACKWARD MOVEMENT IS PROHIBITED.''

Inspection and Corrective Action

(h) At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD: Do an eddy current inspection of the MLG main fittings and repair before further flight as applicable, in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin F100–32–106, including Appendices A through C and excluding Appendix D, dated February 18, 2005, except as provided by paragraphs (i) and (j) of this AD.

(1) For airplanes on which an inspection has not been done in accordance with Messier-Dowty Service Bulletin F100–32–104, Revision 2, dated October 30, 2003: Within 3 months after April 26, 2006.

(2) For airplanes on which an inspection has been done in accordance with Messier-Dowty Service Bulletin F100–32–104, Revision 2, dated October 30, 2003: Within 2,000 flight cycles since the last inspection done in accordance with the service bulletin or within 3 months after April 26, 2006, whichever occurs later.

Exceptions to the Service Bulletin

(i) Where Messier-Dowty Service Bulletin F100–32–106, including Appendices A through C and excluding Appendix D, dated February 18, 2005, specifies contacting the manufacturer for repair: Before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority—The Netherlands (CAA–NL) (or its delegated agent).

(j) Although Messier-Dowty Service Bulletin F100–32–106, including Appendices A through C and excluding Appendix D, dated February 18, 2005, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Parts Installation

(k) As of April 26, 2006, and until the effective date of this AD, no person may install, on any airplane, a Messier-Dowty MLG, unless it has been inspected/repaired according to paragraph (h) of this AD.

New Requirements of This AD

Inspection and Repair

(l) At the applicable times specified in paragraphs (l)(1), (l)(2), and (l)(3) of this AD: Do an eddy current inspection of the MLG main fitting for cracks, and rework the MLG main fitting if applicable, in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin F100–32–111, including Appendices A through C and excluding Appendix D, dated December 20, 2005; except as provided by paragraph (m) of this AD. The rework must be done before further flight.

(1) For all MLG main fittings, except those units identified in paragraph (l)(2) of this AD: Inspect within the next 2,000 flight cycles since the last inspection required by paragraph (h) of this AD, or within 4 months after the effective date of this AD, whichever occurs later.

(2) For new MLG main fittings and MLG main fittings on which both bores have been repaired (reworked) in accordance with paragraph (h) of this AD: Inspect within 4,000 flight cycles since new (installation) or repaired (rework) in accordance with paragraph (h) of this AD, as applicable.

(3) For all MLGs: Repeat the eddy current inspection thereafter at intervals not to exceed 2,000 flight cycles.

Exception to Service Bulletin F100–32–111

(m) Although Messier-Dowty Service Bulletin F100–32–111, including Appendices A through C and excluding Appendix D, dated December 20, 2005, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Parts Installation

(n) As of the effective date of this AD, no person may install, on any airplane, a Messier-Dowty MLG, unless it has been inspected and reworked in accordance with paragraph (l) of this AD.

Alternative Methods of Compliance (AMOCs)

(o) The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(p) The Civil Aviation Authority—The Netherlands airworthiness directive NL–2006–003, dated February 7, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on June 24, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14976 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0716; Airspace Docket No. 08–ASW–9]

RIN 2120–AA66

Proposed Establishment of Low Altitude Area Navigation Route (T-Route); Houston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish a low altitude Area Navigation (RNAV) route, designated T–254, in the Houston, TX, terminal area. T-routes are low altitude Air Traffic Service routes, based on RNAV, for use by aircraft that have instrument flight rules (IFR) approved Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) equipment. This action would enhance safety and improve the efficient use of the navigable airspace in the Houston, TX, terminal area.

DATES: Comments must be received on or before August 18, 2008.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2008–0716 and Airspace Docket No. 08–ASW–9 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2008–0716 and Airspace Docket No. 08–ASW–9) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2008–0716 and Airspace Docket No. 08–ASW–9.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov,* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, Air Traffic Organization, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish a low altitude RNAV route in the Houston, TX, terminal area. The route, designated as T–254, would be depicted on the appropriate IFR En Route Low Altitude charts. This T-route is only intended for use by GPS/GNSS equipped aircraft and is being proposed to enhance safety and to facilitate the more flexible and efficient use of the navigable airspace for en route IFR operations transitioning through and around the Houston Class B airspace area.

Low altitude RNAV routes are published in paragraph 6011 of FAA Order 7400.9R signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The low altitude RNAV routes listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes a low altitude Area Navigation route (T-route) at Houston, Texas.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a, 311b, and 311k. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.R, Airspace Designations and Reporting Points, signed August 15, 2006 and effective September 15, 2007, is amended as follows:

Paragraph 6011 Area Navigation Routes.

* * * * *

T–254 Centex, TX to Lake Charles, LA [New]

Centex, TX (CWK)	VORTAC	(Lat. 30°22′43″ N., long. 97°31′47″ W.)
College Station, TX (CLL)	VORTAC	(Lat. 30°36′18″ N., long. 96°25′14″ W.)
EAKES, TX	WP	(Lat. 30°33′18″ N., long. 95°18′29″ W.)
CREPO, TX	WP	(Lat. 30°16′54″ N., long. 94°14′43″ W.)
Lake Charles, LA (LCH)	VORTAC	(Lat. 30°08′28″ N., long. 93°06′18″ W.)

* * * * *

Issued in Washington, DC, on June 25, 2008.

Paul Gallant,

Acting Manager, Airspace and Rules Group.

[FR Doc. E8–15018 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 293

RIN 1076–AE99

Class III Tribal State Gaming Compact Process

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Indian Affairs (BIA) proposes to establish procedures for Indian tribes and States to submit Tribal-State compacts and compact amendments, governing the conduct of class III gaming activities on the tribe's Indian lands located within that State, for review and approval by the Secretary of the Interior.

DATES: Comments must be received on or before September 2, 2008.

ADDRESSES: You may submit comments on the rule, identified by the number 1076–AE99, by any of the following methods:

- *Federal rulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–273–3153.
- *Mail:* Ms. Paula Hart, Acting Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, 1849 C Street, NW, Mail Stop 3657–MIB, Washington, DC 20240.
- *Hand delivery:* Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, 1849 C Street, NW., Room 3657–MIB, Washington, DC, from 9 a.m. to 4 p.m., Monday through Friday.

Note that requests for comments on the rule and the information collection are separate. Comments on the information collection requirements should be sent to: Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, by e-mail at *http://www.OIRA_DOCKET@omb.eop.gov* or, by facsimile at (202) 395–6566.

Please also send a copy of your comments on information collection requirements to the Office of Indian Gaming at the above address.

FOR FURTHER INFORMATION CONTACT: Paula Hart, Acting Director, Office of Indian Gaming, (202) 219–4066.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2, 9, and 2710. The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

Background

The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701–2721, was signed into law on October 17, 1988. IGRA, 25 U.S.C. 2710, authorizes class III gaming activities on Indian lands when authorized by an approved ordinance, located in a State that permits such gaming and conducted in conformance with a Tribal-State compact. IGRA, 25 U.S.C. 2710(d)(8)(A), (B) and (C), authorizes the Secretary to approve, disapprove or consider approved a Tribal-State compact or compact amendment and publish notice of that approval or considered approval in the **Federal Register**. The submission process for the Tribal-State compact or compact amendment is not clear. Therefore this proposed rule establishes procedures for submitting Tribal-State compacts and compact amendments.

Procedural Requirements

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget (OMB).

(a) This rule will not have an economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

(b) This rule will not create serious inconsistencies or otherwise interfere with an action taken or planned by another Federal agency. BIA is the only governmental agency that approves Tribal-State compacts and compact amendments.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule sets out the procedures for the submission of Tribal-State compacts and compact amendments.

(d) This rule will not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Indian tribes are not considered to be small entities for the purposes of this Act.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal government or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (Executive Order 12630)

In accordance with Executive Order 12630, the Department has determined that this rule does not have significant takings implications. The rule does not pertain to the ''taking'' of private property interests, nor does it impact private property. A takings implication assessment is not required.

Federalism (Executive Order 13132)

In accordance with Executive Order 13121, the Department has determined that this rule does not have significant Federalism implications because it does not substantially and directly affect the relationship between the Federal and State governments and does not impose costs on States or localities. A Federalism Assessment is not required.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. The rule contains no drafting errors or ambiguity and is written to minimize litigation, provides clear standards, simplify procedures, reduces burden, and are clearly written. The rule does not preempt any statute.

National Environmental Policy Act

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained and the collection requires displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. This regulation requires an information collection under the Paperwork Reduction Act of 1955 at § 293.9. The information is submitted to fulfill requirements for approval of a Tribal-State compact or compact amendment and it is used by the Bureau to determine whether the tribe has met the criteria required by 25 CFR part 293. All information is collected in the tribe's submission of a Tribal-State compact or compact amendment. It is estimated that a tribe's application will need 360 hours to complete. The tribe will maintain the records as would any business; the Bureau maintains official files. In accordance with 44 U.S.C. 3507(d), BIA has submitted the information and recordkeeping requirements of this proposed rule to OMB for review and approval.

The Bureau invites comments on the information collection requirements of this proposed rule. You may submit comments to the Desk Officer for the Department of Interior by e-mail at *OIRA_DOCKET@omb.eop.gov* or by facsimile at (202) 365–6566. Please send a copy of your comments to BIA at the location specified under the heading **ADDRESSES**.

You can receive a copy of BIA's submission to OMB by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section, or by requesting the information from the BIA Information Collection Clearance Officer, 625 Herndon Parkway, Herndon, VA 20970.

Comments should address: (1) Whether the collection of information is necessary for the proper performance of the Program, including the practical utility of the information to the BIA; (2) the accuracy of the BIA's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Organizations and individuals who submit comments on the information collection requirements should be aware that the Department keeps such comments available for public inspection during regular business hours. If you wish to have your name and address withheld from public inspection, you must state this prominently at the beginning of any comments you make. The Department will honor your request to the extent allowable by law. We may withhold the information for other reasons.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with the President's memorandum of May 14, 1988, ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655), and Executive Order 13175, we have conducted consultation sessions with tribal governments on the development of proposed regulations to establish procedures for submitting Tribal-State compacts and compact amendments. Consultation sessions with tribal governments were conducted on the following dates and at the following locations: April 9, 2008 in Albuquerque, New Mexico and on April 23, 2008 in San Diego, California. The draft regulation was modified to reflect comments received during the consultation, as well as written comments received from Indian tribes.

Effects on the Nation's Energy Supply (Executive Order 13211)

This rule does not have a significant effect on the nation's energy supply, distribution, or use as defined by Executive Order 13211.

Clarity of This Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ and a numbered heading; for example, § 293.8 Who can submit a compact or amendment?)

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Public Comment Solicitation

If you wish to comment on the rule, please see the different methods listed in the **ADDRESSES** section. Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comments—including your personal identifying information—may be publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 25 CFR Part 293

Indians—business and finance, Indians—gaming.

Dated: May 22, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

For reasons stated in the preamble, the Bureau of Indian Affairs proposes to amend 25 CFR chapter I by adding part 293, to read as follows:

PART 293—CLASS III TRIBAL STATE GAMING COMPACT PROCESS

Sec.

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 2710.

§ 293.1 What is the purpose of this part?

This part contains:

(a) Procedures that Indian tribes and States must use when submitting Tribal-State compacts and compact amendments to the Department of the Interior; and

(b) Criteria that the Secretary will use for approval or disapproval of such Tribal-State compacts or compact amendments.

§ 293.2 How are key terms defined in this part?

(a) For purposes of this part, all terms have the same meaning as set forth in the definitional section of the Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2703 and any amendments thereto.

(b) As used in this part:

(1) Compact means a class III Tribal-State gaming compact, and

(2) Amendment means an amendment to a class III Tribal-Stategaming compact.

§ 293.3 What is a compact?

A compact is an agreement negotiated between an Indian tribe and a State governing the conduct of class III gaming activities on the tribe's Indian lands located within that State.

§ 293.4 What authority does the Secretary have to approve or disapprove compacts and amendments?

The Secretary has the authority to approve compacts or amendments ''entered into'' by an Indian tribe and a State, as evidenced by the appropriate signature of both parties.

§ 293.5 When should the Indian tribe or State submit a compact or a compact amendment for review and approval?

The Indian tribe or State should submit the compact or amendment after it has been legally entered into by both parties.

§ 293.6 Are technical amendments subject to review and approval?

No. Technical, non-substantive amendments can be agreed upon by the parties without requiring Secretarial approval under the Indian Gaming Regulatory Act. However, substantive amendments of the terms of the compact must be approved by the Secretary. A substantive amendment is one that potentially implicates any of the three statutory reasons available to the Secretary to disapprove a compact listed in § 293.15.

§ 293.7 Are extensions of compacts and amendments subject to review and approval?

Yes. Extensions to compacts or amendments are subject to review and approval.

§ 293.8 Who can submit a compact or amendment?

Either party (Indian tribe or State) to a compact or amendment can submit the compact or amendment to the Secretary for review and approval.

§ 293.9 What documents must be submitted with a compact or amendment?

(a) Documentation submitted with a compact or amendment must include:

(1) At least one original compact or amendment executed by both the tribe and the State; and

(2) A tribal resolution or other document, including the date and place of adoption and the result of any vote taken, that certifies that the tribe has adopted the compact or amendment in accordance with applicable tribal law;

(b) The Secretary may request any other documentation necessary to determine whether to approve or disapprove the compact or amendment.

§ 293.10 Where should a compact or amendment be submitted for review and approval?

Compacts and amendments must be submitted to the Director, Office of Indian Gaming, U.S. Department of the Interior, 1849 C Street, NW., Mail Stop 3657, Main Interior Building, Washington, DC 20240.

§ 293.11 How long will the Secretary take to review a compact or amendment?

(a) The Secretary must approve or disapprove a compact or amendment within 45 consecutive calendar days after receiving the compact or amendment.

(b) The Indian tribe and the State will be notified in writing of the Secretary's decision to approve or disapprove a compact or amendment.

§ 293.12 When will the 45-day timeline be triggered?

The 45-day timeline will be triggered when a compact or amendment is received and date stamped in the Office of Indian Gaming at the address listed in § 293.10.

§ 293.13 What happens if the Secretary does not act on the compact or amendment within the 45-day review period?

If the Secretary neither affirmatively approves nor disapproves a compact or amendment within the 45-day review period, the compact or amendment is considered to have been approved, but only to the extent it complies with the provisions of the Indian Gaming Regulatory Act.

§ 293.14 Who can withdraw a compact or amendment after it has been received by the Secretary?

To withdraw a compact or amendment after it has been received by the Secretary, the Indian tribe and State must submit a written request to the Director, Office of Indian Gaming at the address listed in § 293.10.

§ 293.15 When may the Secretary disapprove a compact or amendment?

The Secretary may disapprove a compact or amendment only if it violates:

(a) Any provision of the Indian Gaming Regulatory Act;

(b) Any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands; or

(c) The trust obligations of the United States to Indians.

§ 293.16 When does an approved or considered-to-have-been-approved compact or amendment take effect?

(a) An approved or considered-to-have-been-approved compact or amendment takes effect on the date that notice of its approval is published in the **Federal Register**.

(b) The notice of approval must be published in the **Federal Register** within 90 days from the date the compact or amendment is received by the Office of Indian Gaming.

§ 293.17 How does the Paperwork Reduction Act affect this part?

The information collection requirements contained in § 293.9 have been approved by the OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned control number 01XX. A federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[FR Doc. E8–14951 Filed 7–1–08; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–151135–07]

RIN 1545–BH39

Multiemployer Plan Funding Guidance; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of a public hearing on proposed rulemaking.

SUMMARY: This document contains a correction to a notice of public hearing on a notice of proposed rulemaking that was published in the **Federal Register** on Friday, June 27, 2008 (73 FR 36476) providing additional rules for certain multiemployer defined benefit plans that are in effect on July 16, 2006. These proposed regulations affect sponsors and administrators of, and participants in multiemployer plans that are in either endangered or critical status. These regulations are necessary to implement the new rules set forth in section 432 that are effective for plan years beginning after 2007. The proposed regulations reflect changes made by the Pension Protection Act of 2006.

FOR FURTHER INFORMATION CONTACT: Bruce Perlin, (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 432 of the Internal Revenue Code.

Need for Correction

As published, a notice of a public hearing on proposed rulemaking (REG–151135–07) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of a notice of public hearing on proposed rulemaking (REG–151135–07), which was the subject of FR Doc. E8–14563, is corrected as follows:

On page 36477, column 1, under the caption **SUPPLEMENTARY INFORMATION**, line 5, the language **Federal Register** on Tuesday, March 8,'' is corrected to read **Federal Register** on Tuesday, March 18,''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–15043 Filed 7–1–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 26 and 301

[REG–121698–08]

RIN 1545–BI00

Amendments to the Section 7216 Regulations—Disclosure or Use of Information by Preparers of Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Procedure and Administration section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide updated guidance affecting tax return preparers regarding the disclosure of a taxpayer's social security number to a tax return preparer located outside of the United States in order to provide an exception allowing such disclosure with the taxpayer's consent in limited circumstances. The text of those temporary regulations also serves as the text of these proposed regulations. This document invites comments from the public on these regulations, and provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by September 30, 2008. Outlines of topics to be discussed at the public hearing scheduled for October 6, 2008 at 10 a.m. must be received by September 15, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–121698–08), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–121698–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–121698–08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Lawrence E. Mack, (202) 622–4940; concerning the submissions of comments and requests for hearing, Fumni Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains proposed amendments to 26 CFR part 301 under section 7216 to provide modified rules relating to the ability of a tax return preparer located within the United States to disclose a taxpayer's social security number (''SSN'') constituting tax return information with the taxpayer's consent to a tax return preparer located outside of the United States. Simultaneously with the publication of this notice of proposed rulemaking, temporary regulations are published in the Rules and Regulations section of this issue of the **Federal Register** amending 26 CFR part 301. Those regulations provide a limited exception to the general rule prohibiting a return preparer from obtaining a taxpayer's consent to disclose the taxpayer's SSN to a tax return preparer located outside of the United States. The limited exception provides that a tax return preparer within the United States may disclose an SSN with the taxpayer's consent to a tax return preparer located outside of the United States when both the tax return preparer located within the United States and the tax return preparer located outside of the United States maintain an ''adequate data protection safeguard'' and the tax return preparer located within the United States verifies the maintenance of the adequate data protection safeguards in the request for the taxpayer's consent. Those regulations also clarify that the general prohibition regarding disclosure of SSNs applies only to those taxpayers filing a return in the Form 1040 Series, for example, Form 1040, Form 1040NR, Form 1040A, or Form 1040EZ. The text of those regulations also serves as the text of these regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules, how they can be made easier to understand, and the administrability of the rules in the proposed regulations, as well as the accompanying guidance published in Revenue Procedure 2008–35. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 6, 2008, beginning at 10 a.m. in the NYU Room (room 2615) of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments on September 30, 2008 and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 15, 2008. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Lawrence E. Mack, Office of the Associate Chief Counsel (Procedure & Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Par. 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 301.7216–3 is amended by revising paragraph (b)(4) to read as follows:

§ 301.7216–3 Disclosure or use permitted only with the taxpayer's consent.

* * * * *

(b) * * *

(4) [*The text of proposed § 301.7216–3(b)(4) is the same as the text for § 301.7216–3T(b)(4), published elsewhere in this issue of the* **Federal Register**.]

* * * * *

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–15047 Filed 7–1–08; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 43

[WC Docket No. 07–38; FCC 08–89]

Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice Over Internet Protocol (VoIP) Subscribership

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the Further Notice of Proposed Rulemaking (FNPRM), the Federal Communications Commission (Commission) seeks comment on modifications to the FCC Form 477 data collection to collect additional data on broadband service subscriptions. These changes will greatly improve the ability of the Commission to understand the extent of broadband deployment, and

will enable the Commission to continue to develop and maintain appropriate broadband policies, in particular to carry out its obligation under section 706 of the Telecommunications Act of 1996 to ''determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.''

DATES: Comments on Broadband Availability Mapping are due on or before July 17, 2008. Reply comments on Broadband Availability Mapping are due on or before August 1, 2008. Comments on all other issues are due on or before August 1, 2008. Reply comments on all other issues are due on or before September 2, 2008.

ADDRESSES: You may submit comments, identified by WC Docket No. 07–38, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Parties choosing to file by paper must file an original and four copies of each filing in WC Docket No. 07–38. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. The Commission's mail contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Alan Feldman, Wireline Competition Bureau, Industry Analysis and Technology Division, (202) 418–0940.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking in WC Docket No. 07–38, adopted on March 19, 2008, and released on June 12, 2008. The complete text of this Further Notice of Proposed Rulemaking is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at *www.fcc.gov.* Alternative formats are available for persons with disabilities by contacting the Consumer and Governmental Affairs Bureau, at (202) 418–0531, TTY (202) 418–7365, or at *fcc504@fcc.gov.* The complete text of the decision may be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc., Room CY–B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, or e-mail at *fcc@bcpiweb.com.*

Synopsis of Further Notice of Proposed Rulemaking

1. In this Further Notice of Proposed Rulemaking (Further Notice), the Commission seeks comment on modifications to the FCC Form 477 data collection to collect additional data on broadband service subscriptions. These proposed changes will enable the Commission to continue to develop and maintain appropriate broadband policies, in particular to carry out its obligation under section 706 of the Telecommunications Act of 1996 to ''determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.''

2. In particular, the Commission seeks comment on developing a nationwide broadband availability mapping program. The Commission seeks comment on ways in which it might effectively capture information about actual, delivered speeds of broadband Internet access services, and about prices of broadband services. In addition, the Commission seeks comment on whether to require Form 477 filers to report the number of voice telephone service connections at the ZIP Code or Census Tract level. Finally, the Commission seeks comment on methodologies for consumer broadband surveys, and on methods for preserving confidentiality when sharing the information collected on Form 477.

Reporting Number of Lines and Channels

3. Currently, local exchange carriers that file Form 477 are required to report the total number of voice-grade equivalent lines and wireless channels provided to end users. This information is provided on a state-by-state basis. In this Further Notice, the Commission seeks comment on whether to require Form 477 filers to report the number of voice telephone service connections, and the percentage of these that are residential, at the 5-digit ZIP Code or Census Tract level. This increased granularity of data would enable the Commission to better assess adoption of particular technologies and competition using particular technologies in localized areas. The Commission seeks comment on the benefits and burdens associated with this additional reporting requirement.

Broadband Availability Mapping

4. In the Data Gathering Notice, the Commission sought comment on methods to better use the data collected by Form 477. The Commission acknowledged the success of the ConnectKentucky initiative and its interactive mapping program. The Commission notes that the ConnectKentucky program, along with other efforts at the state level, has facilitated identification of areas without broadband service, and that this identification has resulted in public and private resources being focused to provide service to unserved areas. In order to provide an information resource that will facilitate similar focus nationwide, the Commission seeks comment on the adoption of a national broadband mapping program with the objective of creating a highly detailed map of broadband availability nationwide. The Commission seeks comment on ways such a program can provide useful information to other broadband initiatives undertaken by federal and state agencies and public-private partnerships, such as ConnectKentucky. The Commission seeks comment on whether and to what extent it might work with the

Department of Agriculture's Rural Utilities Service in developing and using this mapping program, so as to combine the expertise of the Commission and its staff with that of the RUS in supporting rural infrastructure deployment.

5. The Commission tentatively concludes that the Commission should collect information that providers use to respond to prospective customers to determine on an address-by-address basis whether service is available. The Commission seeks comment on this conclusion, and on what standardized formats could be used to collect the information. The Commission seeks comment on whether and how a nationwide broadband mapping program can incorporate the data collected on Form 477, including information on broadband service subscriptions by Census Tract and by speed tier. The Commission also seeks comment on whether there are other sources of data it should collect to improve the output of the broadband service availability mapping program. The Commission seeks comment on how to maintain the confidentiality of broadband service information while still providing a rich resource for use by other federal agencies, states, localities, and public-private partnerships in focusing resources on expanding broadband availability in a manner, similar to the focusing of resources enabled by the ConnectKentucky project. The Commission will apply an expedited comment cycle on this issue, and it intends to issue a responsive Order within 4 months.

Delivered Speed Information Gathering

6. In the Data Gathering Notice the Commission sought comment on whether to require reporting of actual broadband connection speeds experienced by customers rather than the theoretical maximum that a given network can support or the particular service configuration allows. The record indicates that factors beyond the control of service providers may compromise the ability of service providers to report actual speeds experienced by consumers. Also, comments in the record point to the existence of other methods of collecting this information. In this Further Notice, the Commission seeks comment on how it might require service providers to report this information, and any alternative means, in addition to or other than requiring such service provider reporting, for effectively capturing meaningful information about actual speeds of Internet access services experienced by consumers.

Broadband Price Information

7. In the Data Gathering Notice, the Commission sought comment on whether and how it could collect price information for broadband services. Among other questions, the Commission asked how to compare price information in introductory offers and bundled services. In the record in this proceeding, commenters note that such price information is helpful in understanding broadband uptake, particularly when viewed across regions and in comparison to demographic information. Comments from state entities also emphasized the value of gathering price information, particularly for low-cost broadband services, to assist the state entities with ensuring availability of broadband service and monitoring competition. Commenters note, however, that price information is complex due to promotions, bundling discounts, contract terms, multi-part tariffs, and other contextual information, and that price fluctuations can be frequent and have the potential to render data gathering meaningless or even misleading. Some commenters suggest collecting pricing information on a price-per-bit basis to simplify reporting and comparison. Others question the need for or utility of collecting this information on Form 477 at all and note that other entities are already gathering pricing information on broadband services. One commenter suggests that any meaningful standards or comparisons need to somehow account for non-speed differences in service features. Another states that the lack of low-cost, standalone broadband service itself may be indicative of a lack of competition.

8. The Commission seeks to supplement and enrich the record on broadband price information. The Commission seeks comment on requiring providers to report, for each state or each Census Tract in which they offer service, the monthly price the provider charges for standalone broadband service in each of the speed tiers used for Form 477 reporting, not including any temporary promotional price discounts or any discounts for bundled services. If a provider offers multiple broadband services with different service characteristics within a speed tier (*e.g.,* services that include either a static or a dynamic IP address), or charges different prices for a service for customers in different portions of a state or Census Tract, the Commission seeks comment on whether it should require the provider to report the lowest and the highest prices available to consumers within the state or Census Tract, in order to identify the range of prices that a consumer may have to pay. In the alternative, the Commission seeks comment on whether it should require providers to report the lowest price for standalone service available to consumers within the state or Census Tract within each speed tier. If a provider has only national pricing for a service, the Commission seeks comment on permitting the provider to report the monthly national price for such a service, in lieu of individual state reports. The Commission also seeks comment on whether there are any methods to derive a standalone price for broadband service when only bundled services are offered by a provider. Specifically, if a provider does not offer standalone service, but does offer bundled service, the Commission seeks comment on whether it should require the provider to report the total monthly price of the least expensive bundle of services that includes the broadband service. The Commission seeks comment on whether it should also require providers to report the Average Revenue Per User, or ARPU, for their services. The Commission seeks comment on any additional metrics or standards that it may adopt to collect meaningful comparative broadband price information in the presence of widespread service bundling, promotional pricing, flux and variability in broadband service prices, and the variety of optional features associated with services. And finally, the Commission seeks comment on whether and in what form the Commission should use the reported service price information.

Preserving Confidentiality

9. In the Further Notice above, the Commission seeks comment on a national broadband availability mapping program, and on how it can provide information gathered by that program to other broadband initiatives undertaken by federal and state agencies and by public-private partnerships. Comments in the record indicate concern for the confidentiality of reported data. The Commission seeks comment on ways in which it can preserve confidentiality when sharing the information collected on Form 477, the voluntary registry, and other sources with agencies such as the Department of Agriculture's Rural Utilities Service and with public-private partnerships such as ConnectKentucky and similar ventures, for example by sharing the data in a less granular or aggregated form than the level at which it is collected.

Broadband Customer Surveys

10. The Commission seeks comment on whether it should conduct and publish periodic surveys of broadband customers to obtain information about the price, technology, and speed of their connections and to obtain information about the applications and services that they use over the connections. The Commission asks commenters to provide information on the appropriate methodology for conducting such surveys.

Ex Parte Presentations

11. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules as well.

Comment Filing Procedures

12. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings related to this Notice of Proposed Rulemaking should refer to WC Docket No. 07–38. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's rulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
  - For ECFS filers, if multiple dockets or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

13. Comments and reply comments and any other filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at *FCC@BCPIWEB.COM.* The pleadings will also be available for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, and through the Commission's Electronic Comment Filing System (ECFS) accessible on the Commission's Web site, *http://www.fcc.gov/cgb/ecfs.*

14. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

15. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments also must comply with section 1.49 and all other applicable sections of the Commission's rules. All parties are encouraged to utilize a table of contents, and to include the name of the filing party and the date of the filing on each page of their submission. The Commission also strongly encourages that parties track the organization set forth in this Further Notice in order to facilitate its internal review process.

16. Commenters who file information that they believe should be withheld from public inspection may request confidential treatment pursuant to Section 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. *See* 47 CFR 0.461; 5 U.S.C. 552. The Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

Paperwork Reduction Act of 1995 Analysis

17. The Further Notice of Proposed Rulemaking contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. A copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to the Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov*, and to Nicholas Fraser, Office of Management and Budget (OMB), via e-mail to

Nicholas_A._Fraser@ omb.eop.gov or via fax at 202–395–5167.

18. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Legal Basis

19. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1 through 5, 10, 11, 201 through 205, 215, 218 through 220, 251 through 271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 155, 160, 161, 201 through 205, 215, 218 through 220, 251 through 271, 303(r), 332, 403, 502, and 503, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt.

Initial Regulatory Flexibility Analysis

20. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from today's Further Notice. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided above. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Further Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

21. In the Further Notice, In the Further Notice, the Commission considers how to best implement certain reporting requirements and whether there are additional reporting requirements it should adopt to improve the ability of the Commission to understand the extent of deployment of broadband and related services. Specifically, the Commission seeks comment on whether to require local exchanges carriers and interconnected VoIP service providers to report the number of voice telephone service connections, and the percentage of these that are residential, at the 5-digit ZIP Code or Census Tract level. The Commission seeks comment on whether to create a broadband mapping program, and on information that can be collected and included in the program. The Commission also seeks comment on whether it should require reporting of information on price of broadband services, and information on actual, delivered broadband speeds, and the Commission seeks comment on standards and methodologies appropriate for the collection of this data. Finally, the Commission seeks general comments on ways to maintain the privacy of the currently reported data as well as the new data collections proposed in the Further Notice, and on appropriate methodologies for the creation of broadband consumer surveys to acquire additional information. For each of these issues, the Commission also seeks comment on the burdens, including those placed on small carriers, associated with corresponding Commission rules related to each issue and whether there are alternative rules that might lessen any burden.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

22. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

Wireline Carriers and Service Providers

23. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by its action.

24. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers reported that they were engaged in the provision of either competitive local exchange carrier or competitive access provider services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by its action.

25. The Commission has included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

26. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 184 carriers have reported that they are

engaged in the provision of local resale services. Of these, an estimated 181 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by its action.

27. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 853 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by its action.

28. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by its action.

29. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 330 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 330 companies, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by its action.

30. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by its action.

31. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 104 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 102 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by its action.

32. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to the Commission's data, at the beginning of July 2006, the number of 800 numbers assigned was 7,647,941; the number of 888 numbers assigned was 5,318,667; the number of 877 numbers assigned was 4,431,162; and the number of 866 numbers assigned was 6,008,976. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,647,941 or fewer small entity 800 subscribers; 5,318,667 or fewer small entity 888 subscribers; 4,431,162 or fewer small entity 877 subscribers; and 5,318,667 or fewer small entity 866 subscribers.

Wireless Carriers and Service Providers

33. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

34. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior categories and associated data. For the first category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the second category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, using the prior categories and the available data, the Commission estimates that the majority of wireless firms can be considered small. According to Commission data, 432 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. The Commission estimates that 221 of these are small, under the SBA small business size standard. Thus, under this category and size standard, about half of firms can be considered small.

35. *Common Carrier Paging.* The SBA has developed a small business size standard for Paging, under which a business is small if it has 1,500 or fewer employees. According to Commission data, 365 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 360 have 1,500 or fewer employees, and 5 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by its action. In addition, in the Paging Third Report and Order, the Commission developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

36. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, held in April 1997, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

37. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony. The Commission has estimated that 221 of these are small under the SBA small business size standard.

38. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

39. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

40. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

41. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, the Commission adopted a

small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

42. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

43. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, the Commission adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

44. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

45. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard.

46. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of its evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

47. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the

category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

48. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

49. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by its action.

50. *Wireless Cable Systems.* Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (''BRS''), formerly Multipoint Distribution Service (''MDS''), and the Educational Broadband Service (''EBS''), formerly Instructional Television Fixed Service (''ITFS''), to transmit video programming and provide broadband services to residential subscribers. These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services. The Commission estimates that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating $13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS. Other standards also apply, as described.

51. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to the Commission indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, the Commission estimates that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

52. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS). The Commission estimates that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small entities.

53. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that has annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a ''very small business,'' which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of ''small business'' and ''very small business'' in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, the Commission believes that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

54. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the 218–219 MHz Report and Order and Memorandum Opinion and Order, the Commission established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

55. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24

GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is the Commission's understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

56. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

Satellite Service Providers

57. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $13.5 million. The most current Census Bureau data, however, are from the (last) economic census of 2002, and the Commission will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under both prior categories, such a business was considered small if it had, as now, $13.5 million or less in average annual receipts.

58. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by its action.

59. The second category of Other Telecommunications ''comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by its action.

Cable and OVS Operators

60. In 2007, the SBA recognized new census categories for small cable entities. However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, the Commission will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities. In addition to the estimates provided above, the Commission considers certain additional entities that may be affected by the data collection from broadband service providers. Because section 706 requires it to monitor the deployment of broadband regardless of technology or transmission media employed, the Commission anticipates that some broadband service providers will not provide telephone service. Accordingly, the Commission describes below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

61. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, under this size standard, the majority of firms can be considered small.

62. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

63. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore it is unable to estimate

more accurately the number of cable system operators that would qualify as small under this size standard.

64. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

Electric Power Generation, Transmission and Distribution

65. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: ''This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' The SBA has developed a small business size standard for firms in this category: ''A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year. Census data do not track electric output and the Commission has not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, the Commission estimates that 1,644 or fewer firms may be considered small under the SBA small business size standard.

Internet Service Providers, Web Portals, and Other Information Services

66. In 2007, the SBA recognized two new small business, economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals, and (2) All Other Information Services. However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, the Commission will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities.

67. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs ''provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.'' Under the SBA size standard, such a business is small if it has average annual receipts of $23 million or less. According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year. Of these, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

Other Internet-Related Entities

68. *Web Search Portals.* The Commission's action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''operate Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users.'' The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year. Of these, 303 had annual receipts of under $5 million, and an additional 15 firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

69. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $23 million or less in average annual receipts. According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year. Of these, 6,418 had annual receipts of under $10 million, and an additional 251 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

70. *All Other Information Services.* ''This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).'' The Commission's action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year. Of these, 138 had annual receipts of under $5 million, and an additional four firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

71. *Internet Publishing and Broadcasting.* ''This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.'' The SBA has developed a small business size standard for this census

category; that size standard is 500 or fewer employees. According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year. Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, the Commission estimates that the majority of these firms small entities that may be affected by its action.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

72. In the Further Notice, the Commission proposes four additional or modified information collections that would impose further reporting and recordkeeping requirements on current Form 477 filers, including small entities. Specifically, the Further Notice invites comment on whether and how Form 477 filers should (1) report the number of voice telephone service connections, and the percentage of these that are residential, at the 5-digit ZIP Code or Census Tract, (2) report information to build a map of broadband service availability, (3) report information on broadband service pricing, and (4) report information on actual, delivered speeds of broadband services. The Commission invites comments on the merits and methodologies of such information collections to include suggestions and discussions of other alternatives not specifically discussed in the Further Notice that would meet the objectives of the Further Notice but would impose lesser burdens on smaller entities.

73. Based on these questions, the Commission anticipates that a record will be developed concerning actual burden and alternative ways in which the Commission could lessen the burden on small entities of obtaining improved data about broadband deployment and availability throughout the nation.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

74. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

75. As noted above, the Further Notice invites comment on whether and how current Form 477 filers should (1) report subscriber counts for voice-grade lines and channels at the 5–Digit Zip Code or Census Tract level, (2) report information to build a map of broadband service availability, (3) report information on broadband service pricing, and (4) report information on actual, delivered speeds of broadband services. The Further Notice seeks comment on possible methods for reporting the proposed information collections, as well as suggestions of methods to maintain and report the information that achieve the purposes of the Further Notice while minimizing the burden on reporting entities, including small entities. This information will assist the Commission in determining whether these various proposed information collections would impose a significant economic impact on small entities.

76. Based on these questions, and the alternatives discussed, the Commission anticipates that the record will be developed concerning alternative ways in which it could lessen the burden on small entities of obtaining improved data about broadband availability throughout the nation.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

77. None.

Ordering Clauses

78. Accordingly, *it is ordered* that, pursuant to sections 1 through 5, 11, 201 through 205, 211, 215, 218 through 220, 251 through 271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 155, 161, 201 through 205, 211, 215, 218 through 220, 251 through 271, 303(r), 332, 403, 502, and 503, and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, this Further Notice, with all attachments, *is adopted.*

79. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

80. *It is further ordered* that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Broadband Availability Mapping portion of this Further Notice of Proposed Rulemaking on or before July 17, 2008, and reply comments on or before August 1, 2008, and interested parties may file comments on the other portions of this Further Notice of Proposed Rulemaking on or before August 1, 2008, and reply comments on or before September 2, 2008.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–14875 Filed 7–1–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 523, 531, 533, 534, 536 and 537

[Docket No. NHTSA–2008–0060]

Notice of Availability of a Draft Environmental Impact Statement (DEIS) for New Corporate Average Fuel Economy Standards; Notice of Public Hearing

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of availability of a draft environmental impact statement (DEIS); notice of public hearing.

SUMMARY: NHTSA has prepared a Draft Environmental Impact Statement (DEIS) to disclose and analyze the potential environmental impacts of proposed Corporate Average Fuel Economy (CAFE) standards for model year (MY) 2011–2015 passenger cars and light trucks, which NHTSA recently proposed pursuant to the Energy Independence and Security Act of 2007, and a reasonable range of alternative standards. To inform decisionmakers and the public, the DEIS compares the potential environmental impacts of the proposed standards and alternative standards reflecting a full range of stringencies, and it analyzes direct, indirect, and cumulative impacts in proportion to their significance. The DEIS provides a detailed analysis of potential impacts on energy resources, air quality, and climate. The DEIS uses climate modeling and NHTSA's own computer model to provide quantitative estimates of potential impacts on air quality, carbon dioxide (CO_2) emissions, global mean surface temperature,

rainfall, and sea level rise. The DEIS provides a qualitative analysis of resources that may be impacted by changes in climate, such as freshwater resources, terrestrial ecosystems, coastal ecosystems, land use, human health, and environmental justice. It examines these impacts on the U.S. and on a global scale. In addition, the DEIS analyzes potential environmental impacts unrelated to climate change.

NHTSA invites Federal, State, and local agencies, Indian tribes, and the public to submit written comments and participate in a public hearing on the DEIS using the instructions set forth in this notice. As described in the PROCEDURAL MATTERS section of this notice, each speaker should anticipate speaking for approximately ten minutes, although we may need to adjust the time for each speaker if there is a large turnout. To facilitate review of the DEIS, NHTSA has posted the DEIS on its Web site, and it will be available in the Docket identified by the docket number at the beginning of this notice.[1] Copies in hard copy or electronic (CD–ROM) form have been mailed to all stakeholders on NHTSA's National Environmental Policy Act (NEPA) mailing list for the proposed CAFE standards, and NHTSA will mail a copy of the DEIS or a CD–ROM containing the Appendices to any other interested party who requests one. NHTSA will consider the public comments received on the DEIS in preparing final NEPA documents to support final CAFE standards for MY 2011–2015 passenger cars and light trucks, which NHTSA plans to issue later this year. The agency's NEPA analysis is informing NHTSA's development of those standards.

DATES: *Public Hearing:* The public hearing will be held on Monday, August 4, 2008, from 9 a.m. to 5 p.m. at the National Transportation Safety Board Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594. NHTSA recommends that all persons attending the hearing arrive at least 45 minutes early in order to facilitate entry into the Conference Center. If you wish to attend or speak at the hearing, you must register in advance no later than Friday, July 25, 2008, by following the instructions in the PROCEDURAL MATTERS section of this notice. NHTSA will consider late registrants to the extent time and space allow, but NHTSA cannot ensure that late registrants will be able to attend or speak at the hearing.

Comments: NHTSA must receive written comments on the DEIS by Monday, August 18, 2008. NHTSA will try to consider comments received after that date to the extent the NEPA and rulemaking schedules allow, but NHTSA cannot ensure that it will be able to do so.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Hammel-Smith, Telephone: 202–366–5206, or Mr. Michael Johnsen, Telephone: 202–366–0258, Fuel Economy Division, Office of International Vehicle, Fuel Economy and Consumer Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. E-mail: *nhtsa.nepa@dot.gov*. Information about the CAFE rulemaking and the NEPA process is also available at *http://www.nhtsa.dot.gov.*

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery or Courier:* U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202–366–9324.

Note that all comments received, including any personal information, will be posted without change to *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: NHTSA has prepared a Draft Environmental Impact Statement (DEIS) to disclose and analyze the potential environmental impacts of proposed Corporate Average Fuel Economy (CAFE) standards for model year (MY) 2011–2015 passenger cars and light trucks and a reasonable range of alternative standards.[2] NHTSA recently proposed the standards pursuant to amendments made by the Energy Independence and Security Act of 2007 (EISA) to the Energy Policy and Conservation Act (EPCA).[3] To inform decisionmakers and the public, the DEIS analyzes the potential environmental impacts of the proposed standards and alternative standards reflecting a range of stringencies, and it analyzes direct, indirect, and cumulative impacts in proportion to their significance. The DEIS provides a detailed analysis of potential impacts on energy resources, air quality, and climate. The DEIS uses climate modeling and NHTSA's own computer model to provide quantitative estimates of potential impacts on air quality, CO_2 emissions, global mean surface temperature, rainfall, and sea level rise. The DEIS provides a qualitative analysis of resources that may be impacted by changes in climate, such as freshwater resources, terrestrial ecosystems, coastal ecosystems, land use, human health, and environmental justice. It examines impacts on the U.S. and on a global scale. In addition, the DEIS analyzes potential environmental impacts unrelated to climate change.

Background. EPCA sets forth extensive requirements concerning the rulemaking to establish MY 2011–2015 CAFE standards. It requires the Secretary of Transportation[4] to establish average fuel economy standards at least 18 months before the beginning of each model year and to set them at ''the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year.'' When setting ''maximum feasible'' fuel economy standards, the Secretary is required to ''consider technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy.''[5] NHTSA construes the statutory factors as including environmental and safety considerations.[6] NHTSA also considers environmental impacts under NEPA when setting CAFE standards.

As recently amended, EPCA further directs the Secretary, after consultation with the Secretary of Energy (DOE) and the EPA Administrator, to establish

[1] The DEIS is available at: *http://www.nhtsa.dot.gov/portal/site/nhtsa/menuitem.43ac99aefa80569eea57529cdba046a0/* (last visited June 26, 2008).

[2] *See* National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, and implementing regulations issued by the Council on Environmental Quality (CEQ), 40 CFR Pts. 1500–1508, and NHTSA, 49 CFR Pt. 520.

[3] EISA is Public Law 110–140, 121 Stat. 1492 (December 19, 2007). EPCA is codified at 49 U.S.C. 32901 *et seq.*

[4] NHTSA is delegated responsibility for implementing the EPCA fuel economy requirements assigned to the Secretary of Transportation. 49 CFR 1.50, 501.2(a)(8).

[5] 49 U.S.C. 32902(a), 32902(f).

[6] *See, e.g., Competitive Enterprise Inst.* v. *NHTSA*, 956 F.2d 321, 322 (D.C. Cir. 1992) (citing *Competitive Enterprise Inst.* v. *NHTSA*, 901 F.2d 107, 120 n.11 (D.C. Cir. 1990)).

separate average fuel economy standards for passenger cars and for light trucks manufactured in each model year beginning with model year 2011 ''to achieve a combined fuel economy average for model year 2020 of at least 35 miles per gallon for the total fleet of passenger and non-passenger automobiles manufactured for sale in the United States for that model year.'' [7] In doing so, the Secretary of Transportation is required to increase average fuel economy standards for MY 2011–2020 vehicles through ''annual fuel economy standard increases.'' [8] The standards for passenger cars and light trucks must be ''based on 1 or more vehicle attributes related to fuel economy.'' In any single rulemaking, standards may be established for not more than five model years.[9] EPCA also mandates a minimum standard for domestically manufactured passenger cars.[10]

Earlier this year, NHTSA initiated the EIS process for MY 2011–2015 CAFE standards, which include light truck standards for one model year previously covered by a 2006 final rule establishing CAFE standards for MY 2008–2011 light trucks (namely, MY 2011).[11] We did so because a standard for MY 2011 must be issued by the end of March 2009 and achieving an industry-wide combined fleet average of at least 35 miles per gallon for MY 2020 depends, in substantial part, upon setting standards well in advance so as to provide the automobile manufacturers with as much lead time as possible to make the extensive necessary changes to their automobiles.

The Proposed Action and Possible Alternatives: In its recent Notice of Proposed Rulemaking (NPRM), NHTSA proposed attribute-based (vehicle size) fuel economy standards for passenger cars and light trucks consistent with the ''Reformed CAFE'' approach NHTSA used to establish standards for MY 2008–2011 light trucks.[12] The NPRM proposes separate standards for MY 2011–2015 passenger cars and separate standards for MY 2011–2015 light trucks. This notice briefly describes the proposed standards and the alternatives, which the NPRM and the DEIS discuss in more detail.

Under the proposed standards, each vehicle manufacturer's required level of CAFE would be based on target levels of average fuel economy set for vehicles of different sizes and on the distribution of that manufacturer's vehicles among those sizes. Size would be defined by vehicle footprint.[13] The level of the performance target for each footprint would reflect the technological and economic capabilities of the industry. The target for each footprint would be the same for all manufacturers, regardless of differences in their overall fleet mix. Compliance would be determined by comparing a manufacturer's harmonically averaged fleet fuel economy levels in a model year with a required fuel economy level calculated using the manufacturer's actual production levels and the targets for each footprint of the vehicles that it produces.

In developing the proposed standards and the alternatives, NHTSA considered the four EPCA factors underlying maximum feasibility (technological feasibility, economic practicability, the effect of other standards of the Government on fuel economy, and the need of the nation to conserve energy) as well as relevant environmental and safety considerations. NHTSA used a computer model (known as the ''Volpe model'') that, for any given model year, applies technologies to a manufacturer's fleet until the manufacturer achieves compliance with the standard under consideration. In light of the EPCA factors, the agency placed monetary values on relevant externalities (both energy security and environmental externalities, including the benefits of reductions in carbon dioxide (CO_2) emissions). As discussed in the NPRM, NHTSA also consulted with EPA and DOE regarding a wide variety of matters.

After assessing what fuel saving technologies would be available, how effective they are, and how quickly they could be introduced, NHTSA balanced the EPCA factors relevant to standard-setting. The agency used a marginal benefit-cost analysis to set the proposed standards at levels such that, considering the seven largest manufacturers, the cost of the last technology application equaled the benefits of the improvement in fuel economy resulting from that application. That is the level at which net benefits are maximized. Accordingly, NHTSA refers to the proposed standards as ''optimized'' standards or the ''optimized scenario''. In considering further action on the proposed standards and reasonable alternatives, NHTSA also will consider its NEPA analysis.

NHTSA projects what the industry-wide average fuel economy level would be for passenger cars and for light trucks if each manufacturer produced its expected mix of automobiles and exactly met its obligations under the proposed ''optimized'' standards for each model year. For passenger cars, the average fuel economy (in miles per gallon, or mpg) would range from 31.2 mpg in MY 2011 to 35.7 mpg in MY 2015. For light trucks, the average fuel economy would range from 25.0 mpg in MY 2011 to 28.6 mpg in MY 2015. The combined industry-wide average fuel economy for all passenger cars and light trucks would range from 27.8 mpg in MY 2011 to 31.6 mpg in MY 2015, if each manufacturer exactly met its obligations under the standards proposed in the NPRM.[14]

Under the proposed standards, the annual average increase during the five-year period from MY 2011–MY 2015 would be approximately 4.5 percent. The annual percentage increases would be greater in the early years due to the uneven distribution of new model introductions during this period and to the fact that significant technological changes can be most readily made in conjunction with those introductions.[15] Pursuant to EISA's mandate, domestically manufactured passenger car fleets also must meet an alternative minimum standard for each model year. The alternative minimum standard would range from 28.7 mpg in MY 2011 to 32.9 mpg in MY 2015 under NHTSA's proposal.

In addition to the proposed standards, NHTSA has considered several regulatory alternatives for purposes of both Executive Order 12,866 [16] and its NEPA analysis, which includes a ''no action'' alternative as required by NEPA.

[7] 49 U.S.C.A. §§ 32902(b)(1), 32902(b)(2)(A).

[8] 49 U.S.C.A. § 32902(b)(2)(C).

[9] 49 U.S.C.A. §§ 32902(b)(3)(A), 32902(b)(3)(B).

[10] 49 U.S.C.A. § 32902(b)(4).

[11] *See* Average Fuel Economy Standards for Light Trucks Model Years 2008–2011; Final Rule, April 6, 2006.

[12] Average Fuel Economy Standards, Passenger Cars and Light Trucks; Model Years 2011–2015; Proposed Rule, 73 FR 24352, May 2, 2008.

[13] A vehicle's ''footprint'' is generally defined as ''the product of track width [the lateral distance between the centerlines of the base tires at ground, including the camber angle] * * * times wheelbase [the longitudinal distance between front and rear wheel centerlines] * * * divided by 144. * * *'' 49 CFR 523.2.

[14] NHTSA notes that it cannot set out the precise level of CAFE that each manufacturer would be required to meet for each model year under the proposed standards, because the level for each manufacturer would depend on that manufacturer's final production figures and fleet mix for a particular model year. That information will not be available until the end of each model year.

[15] With the proposed standards, the combined industry-wide average fuel economy would have to increase by an average of 2.1 percent per year from MY 2016–MY 2020 in order to reach EISA's goal of at least 35 mpg by MY 2020. In addition, the NPRM and the DEIS discuss flexibility mechanisms available to manufacturers to meet their obligations.

[16] Exec. Order 12,866, ''Regulatory Planning and Review,'' 58 FR 51,735, October 4, 1993, as amended.

The alternatives, in order of increasing stringency, are:

(1) A ''no action'' alternative of maintaining CAFE standards at the MY 2010 levels of 27.5 mpg and 23.5 mpg for passenger cars and light trucks, respectively.[17] NEPA requires agencies to consider a ''no action'' alternative in their NEPA analyses, although the recent amendments to EPCA direct NHTSA to set new CAFE standards and do not permit the agency to take no action on fuel economy. (NHTSA also refers to this ''no action'' alternative as a ''no increase'' or ''baseline'' alternative.)

(2) An alternative reflecting standards that fall below the optimized scenario by the same absolute amount by which the ''25 percent above optimized alternative'' (described below) exceeds the optimized scenario. NHTSA refers to this as the ''25 percent below optimized alternative''.

(3) An alternative reflecting the ''optimized scenario'', the proposed standards based on applying technologies until net benefits are maximized.

(4) An alternative reflecting standards that exceed the optimized scenario by 25 percent of the interval between the optimized scenario and an alternative (described below) based on applying technologies until total costs equal total benefits. NHTSA refers to this alternative as the ''25 percent above optimized alternative''.

(5) An alternative reflecting standards that exceed the optimized scenario by 50 percent of the interval between the optimized scenario and the alternative based on applying technologies until total costs equal total benefits. This alternative is known as the ''50 percent above optimized alternative''.

(6) An alternative reflecting standards based on applying technologies until total costs equal total benefits (zero net benefits). This is known as the ''TC=TB alternative''.

(7) A ''technology exhaustion alternative'' in which NHTSA applied all feasible technologies without regard to cost by determining the stringency at which a reformed CAFE standard would require every manufacturer to apply every technology estimated to be potentially available for its MY 2011–2015 fleet. Accordingly, the penetration rates for particular technologies would vary on an individual manufacturer basis. NHTSA has presented this alternative in order to explore how the stringency of standards would vary based solely on the potential availability of technologies at the individual manufacturer level without regard to the costs to society.

Under NEPA, the purpose of and need for an agency's action inform the range of reasonable alternatives to be considered in its NEPA analysis.[18] NHTSA believes that these alternatives represent a reasonable range of stringencies to consider for purposes of evaluating the potential environmental impacts of proposed CAFE standards under NEPA, because these alternatives represent a wide spectrum of potential impacts ranging from the current standards to standards based on the maximum technology expected to be available over the period necessary to meet the statutory goals of EPCA, as amended by EISA.[19] However, as discussed in the NPRM and in the DEIS, NHTSA's provisional analysis of these alternatives suggests that some of them may not satisfy the four EPCA factors that NHTSA must apply in setting ''maximum feasible'' CAFE standards (*i.e.*, technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the nation to conserve energy).

The NEPA Process and the DEIS. In March 2008, NHTSA issued a notice of intent to prepare an EIS for the MY 2011–2015 CAFE standards and opened the NEPA ''scoping'' process. In that notice, NHTSA described the statutory requirements for the proposed standards, provided initial information about the NEPA process, and initiated scoping by requesting public input on the scope of NHTSA's NEPA analysis for the proposed standards.[20] In April 2008, NHTSA published a supplemental scoping notice providing additional guidance for participating in the scoping process and additional information about the proposed standards and the alternatives NHTSA expected to consider in its NEPA analysis.[21] NHTSA also outlined its plans for its NEPA analysis.[22] NHTSA mailed both **Federal Register** notices to hundreds of stakeholders and developed a mailing list of interested parties, including Federal agencies with environmental expertise, the Governors of every State and U.S. territory or State NEPA contacts they identified, Indian tribes, organizations representing state and local governments and tribes, the automobile industry, environmental organizations, and other stakeholders interested in the CAFE program. NHTSA received 1,748 comment letters in response to its scoping notices. NHTSA received 11 individual letters commenting on the scope of its NEPA analysis from federal and state agencies, automobile trade associations, environmental organizations, and individuals. The remaining comment letters are form letters from individuals.

In developing the DEIS, NHTSA also consulted with Federal agencies including: CEQ; EPA and the Centers for Disease Control and Prevention (CDC) of the U.S. Department of Health and Human Services, both of which submitted scoping comments to NHTSA; the National Oceanic and Atmospheric Administration (NOAA) within the U.S. Department of Commerce; the U.S. Fish and Wildlife Service and the National Park Service within the U.S. Department of the Interior; and the U.S. Forest Service within the U.S. Department of Agriculture.

NHTSA used the scoping process to help determine ''the range of actions, alternatives, and impacts to be considered'' in the DEIS and to identify the most important issues for analysis.[23] The DEIS consists of a Summary and ten chapters: (1) Purpose and Need for the Proposed Action; (2) The Proposed Action and Alternatives; (3) Affected Environment and Consequences; (4) Cumulative Impacts; (5) Mitigation; (6) Unavoidable Adverse Impacts; Short-Term Uses and Long-term Productivity; Irreversible and Irretrievable Commitment of Resources; (7) Preparers; (8) References; (9) Distribution List; and (10) Index. Three appendices include sources identified in scoping comments (Appendix A), modeling data for air emissions and climate modeling (Appendix B); and a cost-benefit analysis excerpt from

[17] *See* 40 CFR 1502.2(e), 1502.14(d).

[18] 40 CFR 1502.13.

[19] Given EPCA's mandate that NHTSA consider specific factors in setting CAFE standards and NEPA's instruction that agencies give effect to NEPA's policies ''to the fullest extent possible,'' NHTSA recognizes that a very large number of alternative CAFE levels are potentially conceivable and that the alternatives described above essentially represent several of many points on a continuum of alternatives. Along the continuum, each alternative represents a different way in which NHTSA conceivably could assign weight to each of the four EPCA factors and NEPA's policies. CEQ guidance instructs that ''[w]hen there are potentially a very large number of alternatives, only a reasonable number of examples, covering the *full spectrum* of alternatives, must be analyzed and compared in the EIS.'' CEQ, *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 FR 18026, 18027, March 23, 1981 (emphasis original).

[20] *See* Notice of Intent to Prepare an Environmental Impact Statement for New Corporate Average Fuel Economy Standards, 73 FR 16615, March 28, 2008.

[21] Supplemental Notice of Public Scoping for an Environmental Impact Statement for New Corporate Average Fuel Economy Standards, 73 FR 22913, April 28, 2008.

[22] *Id.* at 22916.

[23] *See* 40 CFR §§ 1500.5(d), 1501.7, 1508.25.

NHTSA's Preliminary Regulatory Impact Analysis (Appendix C).

The DEIS devotes the most detailed analysis to direct, indirect and cumulative impacts of the proposed standards and the alternatives on energy, air quality, and climate. Key findings concerning estimated potential impacts on CO_2 emissions, global mean surface temperature, rainfall, and sea level rise include the following:

- *Global CO_2 Emissions Reductions.* Over the 2010 to 2100 timeframe, the range of alternatives NHTSA analyzed would reduce global CO_2 emissions (from all sources) by about 18 to 35 billion metric tons of CO_2 (based on global emissions of 4.85 trillion metric tons of CO_2). The alternatives would slow the expected increase in greenhouse gas (GHG) emissions from the transportation sector over this period.
- *CO_2 Concentration and Global Mean Surface Temperature:* Estimates for CO_2 atmospheric concentrations and global mean surface temperature vary considerably, depending on which global emissions scenario is used as a reference case. Temperature increases are sensitive to climate sensitivity. Yet, projected differences among the CAFE alternatives are small—*i.e.*, CO_2 concentrations as of 2100 are within 1.7 to 3.2 parts per million across alternatives, and temperatures are within 0.0006 to 0.012 °C across alternatives—regardless of reference scenario and climate sensitivity.
- *Rainfall:* The CAFE alternatives reduce temperature increases slightly and thus reduce increases in precipitation slightly, compared to the ''No Action'' alternative.
- *Impact on Sea Level Rise:* The impact on sea level rise from the alternatives is at the threshold of the climate model's reporting: The alternatives reduce sea level rise by 0.1 cm. Although the model does not report enough significant figures to distinguish between the effects of the alternatives, it is clear that the more stringent the alternative (*i.e.*, the lower the emissions), the lower the temperature (as shown above), and the lower the sea level.

The DEIS provides a qualitative analysis of resources that may be impacted by changes in climate, such as freshwater resources, terrestrial ecosystems, coastal ecosystems, land use, human health, and environmental justice. It examines impacts on the U.S. and a global scale. In addition, the DEIS qualitatively examines the alternatives' non-climate change related direct, indirect and cumulative impacts on potentially affected resources. Such resources include: Water resources, biological resources, land use, hazardous materials, safety, noise, historic and cultural resources, and environmental justice.

Throughout the DEIS, NHTSA's analysis relies extensively on findings of the United National Intergovernmental Panel on Climate Change (IPCC) and the U.S. Climate Change Science Program (USCCSP), including those presented in the IPCC's *Fourth Assessment Report: Climate Change 2007* and the USCCSP's *Scientific Assessments of the Effects of Global Change on the United States* and Synthesis and Assessment Products.[24] The DEIS also uses applicable CEQ regulations to acknowledge uncertainty and incomplete or unavailable information relevant to NHTSA's NEPA analysis.[25]

Procedural Matters: The public hearing will be open to the public with advanced registration for seating on a space-available basis. Individuals wishing to register to assure a seat in the public seating area should provide their name, affiliation, phone number, and e-mail address to Ms. Carol Hammel-Smith or Mr. Michael Johnsen using the contact information in the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice no later than Friday, July 25, 2008. Should it be necessary to cancel the hearing due to an emergency or some other reason, NHTSA will take all available means to notify registered participants by e-mail or telephone.

The hearing will be held at a site accessible to individuals with disabilities. Individuals who require accommodations such as sign language interpreters should contact Ms. Carol Hammel-Smith or Mr. Michael Johnsen using the contact information in the **FOR FURTHER INFORMATION CONTACT** section above no later than Friday, July 25, 2008. Any written materials NHTSA presents at the hearing will be available electronically on the day of the hearing to accommodate the needs of the visually impaired. A transcript of the hearing and information received by NHTSA at the hearing will be placed in the docket for this notice at a later date.

How long will I have to speak at the public hearing?

Once NHTSA learns how many people have registered to speak at the public hearing, NHTSA will allocate an appropriate amount of time to each participant, allowing time for lunch and necessary breaks throughout the day. For planning purposes, each speaker should anticipate speaking for approximately ten minutes, although we may need to adjust the time for each speaker if there is a large turnout. To accommodate as many speakers as possible, NHTSA prefers that speakers not use technological aids (*e.g.*, audio-visuals, computer slideshows). However, if you plan to do so, you must let Ms. Carol Hammel-Smith or Mr. Michael Johnsen know by Friday, July 25, 2008, using the contact information in the **FOR FURTHER INFORMATION CONTACT** section above. You also must make arrangements to provide your presentation or any other aids to NHTSA in advance of the hearing in order to facilitate set-up. During the week of July 28, NHTSA will post information on its Web site (*http://www.nhtsa.dot.gov*) indicating the amount of time allocated for each speaker and each speaker's approximate order on the agenda for the hearing.

How can I get a copy of the DEIS?

The DEIS is available on NHTSA's Web site at *http://www.nhtsa.dot.gov/portal/site/nhtsa/menuitem.43ac99aefa80569eea57529cdba046a0/* (last visited June 26, 2008), and it will be available in the Docket identified by the docket number at the beginning of this notice. To request a hard copy or a CD–ROM of the DEIS, or to request a CD–ROM containing the Appendices, please contact Ms. Carol Hammel-Smith or Mr. Michael Johnsen using the contact information in the **FOR FURTHER INFORMATION CONTACT** section above.

How do I prepare and submit written comments?

It is not necessary to attend or to speak at the public hearing to be able to comment on the issues. NHTSA invites the submission of written comments on the DEIS which the agency will consider in preparing the final NEPA documents to support the new CAFE standards for MY 2011–2015 passenger cars and light trucks. Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number at the beginning of this notice in your comments.

Your primary comments cannot exceed 15 pages.[26] However, you may attach additional documents to your primary comments. There is no limit to the length of the attachments.

Anyone is able to search the electronic form of all comments received into any of our dockets by the

[24] *See generally http://www.ipcc.ch/ipccreports/assessments-reports.htm* (last visited June 25, 2008) and *http://www.climatescience.gov* (last visited June 25, 2008).

[25] 40 CFR 1502.22; *see* 40 CFR 1502.21.

[26] 49 CFR 553.21.

name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** at 65 FR 19477, April 11, 2000, or you may visit *http://www.regulations.gov.*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR Part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590, or submit them electronically, in the manner described at the beginning of this notice.

Will the agency consider late comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent the NEPA and rulemaking schedules allow, NHTSA will try to consider comments that Docket Management receives after that date, but we cannot ensure that we will be able to do so.[27]

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Further, some commenters may submit late comments. Accordingly, we recommend that you periodically check the docket for new material. In addition, you may wish to check two separate dockets relating to the proposed CAFE standards: (1) Docket No. NHTSA–2008–0089, which accompanies NHTSA's NPRM; and (2) Docket No. NHTSA–2008–0069, which accompanies NHTSA's request for manufacturers' product plan information.[28]

Comments and information submitted to these dockets may be relevant to NHTSA's NEPA analysis for the proposed CAFE standards.

Issued: June 27, 2008.

Ronald Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 08–1406 Filed 6–30–08; 11:21 am]

BILLING CODE 4910–59–P

[27] *See* 49 CFR 553.23.

[28] Passenger Car Average Fuel Economy Standards—Model Years 2008—2020 and Light Truck Average Fuel Economy Standards—Model Years 2008–2020; Request for Product Plan Information, 73 FR 24190, May 2, 2008.

Notices

Federal Register
Vol. 73, No. 128
Wednesday, July 2, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National Advisory Council on Maternal, Infant and Fetal Nutrition; Notice of Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council on Maternal, Infant and Fetal Nutrition.

DATES: July 22–24, 2008, 9 a.m.—5:30 p.m.

ADDRESSES: The meeting will be held at the Embassy Suites Alexandria—Old Town, 1900 Diagonal Road, Alexandria, Virginia, 22314.

FOR FURTHER INFORMATION CONTACT: Anne Bartholomew, Supplemental Food Programs Division, Food and Nutrition Service, Department of Agriculture, (703) 305–2086.

SUPPLEMENTARY INFORMATION: The Council will continue its study of the Special Supplemental Nutrition Program for Women, Infants and Children, and the Commodity Supplemental Food Program. The agenda items will include a discussion of general program issues. Meetings of the Council are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements before or after the meeting with Anne Bartholomew, Supplemental Food Programs Division, 3101 Park Center Drive, Room 522, Alexandria, Virginia 22302. If members of the public need special accommodations, please notify Ms. Theresa Croson by July 11, 2008, at (703) 305–2347, or by e-mail at *theresa.croson@fns.usda.gov.*

Dated: June 26, 2008.

Roberto Salazar,

Administrator.

[FR Doc. E8–15028 Filed 7–1–08; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Gypsy Moth Management in the United States: A Cooperative Approach

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The United States Department of Agriculture, Forest Service and Animal and Plant Health Inspection Service are extending the expected publication dates for the draft and final supplemental environmental impact statement (SEIS) for Gypsy Moth Management in the United States: A Cooperative Approach.

DATES: The draft SEIS is expected to be published in July 2008 and the final SEIS is expected to be published in July 2009.

FOR FURTHER INFORMATION CONTACT: William K. Oldland, Gypsy Moth SEIS Project Entomologist, Forest Service, Northeastern Area, State and Private Forestry, 180 Canfield Street, Morgantown, WV 26505. Telephone number: (304) 285–1585, e-mail: *woldland@fs.fed.us*. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On April 29, 2004 (69 FR 23492), the Forest Service and the Animal and Plant Health Inspection Service published in the **Federal Register** a Notice of Intent (NOI) to prepare a Supplement to the Final Environmental Impact Statement (EIS) for Gypsy Moth Management in the United States: A Cooperative Approach. The expected date for publication of the draft (SEIS) was March 2005 and February 2006 for the final SEIS. On February 7, 2007 (72 FR 5675), the agencies published a revised NOI in the **Federal Register** extending the expected dates for publishing the draft and final SEIS to July 2007 and July 2008 respectively. Through this revised NOI, the agencies are again extending the expected publication dates for the draft and final SEIS.

The SEIS will document an analysis of the 2004 proposal to add the insecticide, tebufenozide (trade name Mimic), to the agencies' list of treatments for the control of gypsy moth. The 2004 proposal also includes developing a process for adding other insecticides that may become available in the future to their list of treatments for control of gypsy moth, if the proposed insecticides are within the range of effects and acceptable risks for the existing list of treatments. The analysis for this proposal builds on the analysis and documentation for the January 16, 1996, Record of Decision for the Gypsy Moth Management in the United States: A Cooperative Approach Final Environmental Impact Statement, which was published in the **Federal Register** on February 15, 1996 (61 FR 5976). The agencies will prepare a Supplemental Environmental Impact Statement (SEIS) to the November 1995 Final Environmental Impact Statement (EIS), Gypsy Moth Management in the United States: A Cooperative Approach, which was published in the **Federal Register** on December 1, 1995 (60 FR 61698).

Dared: June 25, 2008.

Robin L. Thompson,

Associate Deputy Chief, State & Private Forestry.

[FR Doc. E8–14963 Filed 7–1–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service, an agency delivering the U.S. Department of Agriculture (USDA) Rural Development Utilities Programs, invites comments on this information collection for which

approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by September 2, 2008.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave., SW., STOP 1522, Room 5818 South Building, Washington, DC 20250–1522. *Telephone:* (202) 690–1078. Fax: (202) 720–3485. *E-mail: Michele.brooks@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies an information collection that will be submitted to OMB for approval.

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques, or other forms of information technology. Comments may be sent to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–3485.

Title: 7 CFR Part 1724, Electric Engineering, Architectural Services and Design Policies and Procedures.

OMB Control Number: 0572–0118.

Type of Request: Revision of a previously approved collection.

Abstract: The rule requires borrower to use three Rural Development contract forms under certain circumstances. The use of standard forms helps assure the Agency that:

- Appropriate standards and specifications are maintained;
- The Agency loan security is not adversely affected; and
- Loan and loan guarantee funds are used effectively and for the intended purpose.

Standardization of forms by Rural Development results in substantial savings to:

- Borrowers—If standard forms were not used, borrowers would need to prepare their own documents at significant expense; and
- Government—If standard forms were not used, each document submitted by a borrower would require extensive and costly review by both Rural Development and the Office of General Counsel.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.05 hours per response.

Respondents: Businesses, not-for-profit institutions and others.

Estimated Number of Respondents: 99.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 104 hours.

Copies of this information collection can be obtained from Gale Richardson, Program Development and Regulatory Analysis, at (202) 720–0992.

Fax: (202) 720–3485. *E-mail: gale.richardson@wdc.usda.gov*.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 26, 2008.

James Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E8–15006 Filed 7–1–08; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that briefing and planning meetings of the Vermont Advisory Committee to the Commission will convene at 12 p.m. on Thursday, July 17, 2008, at the State House, Room 11, 115 State Street, Montpelier, Vermont 05633. The purpose of the briefing meeting is for the committee to hear presentations from public officials and community groups on racial profiling in Vermont. After the briefing meeting, the Committee will hold its planning meeting to plan future activities.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by July 31, 2008. The address is the Eastern Regional Office, 624 9th Street NW., Suite 740, Washington, DC 20425. Persons wishing to e-mail their comments, or who desire additional information should contact Alfreda Greene, Secretary, at 202–376–7533 or by e-mail to: *agreene@usccr.gov*.

Hearing-impaired persons who will attend the meetings and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meetings.

Records generated from these meetings may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Eastern Regional Office at the above e-mail or street address.

The meetings will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, June 27, 2008.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8–15001 Filed 7–1–08; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Workflow and Electronic Health Records in Small Medical Practices Study.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 42.

Number of Respondents: 14.

Average Hours Per Response: 3.

Needs and Uses: Needs: The goal of this data collection is to study the information and workflow practices in small physicians' offices operating with and without electronic health record (EHR) across different functions in their

offices. The study will attempt to characterize the workflow, as observed, in these offices to identify sources of time delay in the different tasks performed in the workflow. This will help to identify the barriers for implementing EHR systems.

Affected Public: Business or other for-profit organizations.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5806 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov*.

Dated: June 26, 2008

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–14931 Filed 7–1–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Manufacturing Extension Partnership (MEP) Client Impact Survey

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 2, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kenneth P. Voytek, National Institute of Standards and Technology, Manufacturing Extension Partnership, 100 Bureau Drive, MS 4800, Gaithersburg, MD 20899–4800, 301–975–4614 (phone), 301–963–6556 (Fax), *kvoytek@nist.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Institute of Standards and Technology (NIST) sponsors the Manufacturing Extension Partnership (MEP), a national network of fifty-nine (59) locally based manufacturing extension centers working with small manufacturers to help them improve their productivity, profitability, and enhance their overall economic competitiveness.

NIST MEP surveys all clients provided substantive services and collects data on sales, investment, cost savings, and jobs impacts as well as a limited set of qualitative questions. NIST MEP surveys center clients for two primary purposes:

- To collect aggregate information on program performance indicators to report to various stakeholders on program performance. The survey provides information about the quantifiable impacts that clients attribute to the services provided by MEP centers. NIST MEP also conducts other episodic studies to evaluate the system's impact that corroborate and complement the survey results.
- To provide center-specific program performance and impact information for center use. Centers use this information to communicate results to their own stakeholders, at both the state and federal level. Center management and NIST MEP use these results to evaluate center performance and effectiveness. The MEP Center Review Criteria and review process place strong emphasis on a center's ability to demonstrate impacts based on the survey results.

The specific information obtained from clients about the impact of MEP services is essential for NIST officials to monitor and report on program performance and plan program improvements aimed at improving program efficiency and effectiveness. This information is not available from existing programs or other sources. The collection of information is currently conducted by a contractor. This submission under the Paperwork Reduction Act represents a request for an extension of a currently approved collection.

II. Method of Collection

The survey data will be collected through a combination of phone and web-based surveys.

III. Data

OMB Control Number: 0693–0021.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 8,000.

Estimated Time Per Response: 8 minutes.

Estimated Total Annual Burden Hours: 1,067.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 26, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–14934 Filed 7–1–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; U.S. Fishermen Fishing in Russian Waters

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 2, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Christopher Rogers, (301) 713–9090 or *christopher.rogers@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Regulations at 50 CFR part 300, Subpart J, govern U.S. fishing in the economic zone of the Russian Federation. Russian authorities may permit U.S. fishermen to fish for allocations of surplus stocks in the Russian Economic Zone. The permit application information is sent to the National Marine Fisheries Service (NMFS) for transmission to Russia. If Russian authorities issue a permit, the vessel owner or operator must submit a permit abstract report to NMFS, and also report 24 hours before leaving the U.S. Exclusive Economic Zone (EEZ) for the Russian Economic Zone and 24 hours before re-entering the EEZ after being in the Russian Economic Zone.

The permit application information is used by Russian authorities to determine whether to issue a permit. NMFS uses the other information to help ensure compliance with Russian and U.S. fishery management regulations.

II. Method of Collection

Forms are used for applications. Submission of copies of permits, vessel abstract reports, and departure and return messages are provided by fax.

III. Data

OMB Control Number: 0648–0228.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 1.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 1.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 26, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–14932 Filed 7–1–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; NMFS Alaska Region Observer Providers

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 2, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7008 or *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) Alaska Region Groundfish Observer Program (Observer Program) collects and disseminates catch, bycatch, and biological data necessary to support in-season monitoring and stock assessment of fisheries in the Exclusive Economic Zone off the coast of Alaska. Owners of vessels, shoreside processors, and stationary floating processors are required to carry observers and must arrange for observer services from an observer provider. Although the vessel and plant owners pay for the cost of the observers, the costs associated with managing the program are paid by NMFS. A list of observer providers is available from the Observer Program's home page at *http://www.afsc.noaa.gov/refm/observers/observer_providers.htm*. The main focus of this information collection continues to be the documentation required by NMFS from an observer provider. Observer providers are permitted by NMFS to hire and deploy qualified individuals as observers in the Alaska Region groundfish fisheries. Observer candidates are required to meet specified criteria in order to qualify as an observer and must successfully complete an initial certification training course, as well as meet other criteria, prior to being certified.

II. Method of Collection

Paper applications, electronic reports, and telephone calls are required from participants, and methods of submittal include Internet and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0318.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 205.
Estimated Time Per Response: 30 minutes for industry request for assistance in improving observer data quality issues; 60 hours for new permit application for observer provider; 15 minutes for update to provider

information; 15 minutes for observer candidates college transcripts and disclosure statements, observer candidate; 15 minutes for observer candidates college transcripts and disclosure statements, observer provider; 5 minutes for notification of observer physical examination, observer provider; 2 hours for observer physical examination; 7 minutes for projected observer assignment; 7 minutes for briefing registration; 12 minutes for certificate of insurance; 15 minutes for copies of contracts; 7 minutes for weekly deployment/logistics reports; 7 minutes for debriefing registration; 2 hours for reports of problems; 40 hours for observer provider permit expiration or denial of permit appeals; and 20 hours for appeals for denial of observer certification, certification suspension, or decertification.

Estimated Total Annual Burden Hours: 1,959.

Estimated Total Annual Cost to Public: $83,126.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 26, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–14933 Filed 7–1–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Aleutian Islands Pollock Fishery Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 2, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7008 or *patsy.bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Consolidated Appropriations Act of 2004 (Public Law (Pub. L.) 108–199) was signed into law on January 23, 2004. Section 803 of this law allocates the Aleutian Islands (AI) directed pollock fishery to the Aleut Corporation for economic development of Adak, Alaska. The statute permits the Aleut Corporation to authorize one or more agents for activities necessary for conducting the AI directed pollock fishery. Management provisions for the AI directed pollock fishery include: Restrictions on the harvest specifications for the AI directed pollock fishery; provisions for fishery monitoring; reporting requirements; and an AI Chinook salmon prohibited species catch limit that, when reached, would close the existing Chinook salmon savings areas in the AI.

II. Method of Collection

Participants are identified and approved through a letter from the Aleut Corporation which is approved by National Marine Fisheries Service (NMFS). This letter includes a list of approved participants. A copy of the letter must be on each participating vessel.

III. Data

OMB Control Number: 0648–0513.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Time per Response: 16 hours for Annual AI Pollock Fishery Participant Letter; 5 minutes for copy of NMFS Approval to Participants; 4 hours for appeal process.

Estimated Total Annual Burden Hours: 40.

Estimated Total Annual Cost to Public: $48.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 26, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–14935 Filed 7–1–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AW65

Atlantic Highly Migratory Species (HMS); Atlantic Shark Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; notice of public scoping meetings; extension of comment period.

SUMMARY: NMFS previously published, on May 7, 2008, a notice of intent (NOI) to initiate an amendment to the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), including an Environmental Impact Statement. NMFS now announces the availability of an issues and options presentation describing potential measures for inclusion in Amendment 3 to the 2006 Consolidated HMS FMP and provides details for four scoping meetings to discuss and collect comments on these issues. Comments received by NMFS on the NOI and issues and options presentation as well as in the scoping meetings will be used in the development of Amendment 3 to the 2006 Consolidated HMS FMP.

DATES: Scoping meetings for Amendment 3 will be held from July through October 2008. See **SUPPLEMENTARY INFORMATION** for meeting dates, times, and locations. The deadline for comments on the NOI has been extended from August 5, 2008, as published in the NOI on May 7, 2008 (73 FR 25665), to 5 p.m. on October 31, 2008.

ADDRESSES: Scoping meetings will be held in Freeport, Texas; Fort Pierce, Florida; St. Petersburg, Florida; and Gloucester, Massachusetts. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations.

As published on May 7, 2008 (73 FR 25665), written comments on this action should be sent to Karyl Brewster-Geisz, Highly Migratory Species Management Division, by any of the following methods:

• E-mail: *SCS__Scoping@noaa.gov*. Include the following identifier in the subject line: ''Scoping Comments on Amendment 3 to Consolidated HMS FMP''.

• Written: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Scoping Comments on Amendment 3 to Consolidated HMS FMP.''

• Fax: (301) 713–1917.

The issues and options presentation is available on the HMS website: *http://www.nmfs.noaa.gov/sfa/hms/*. For a copy of the related stock assessments, please contact Michael Clark or Jessica Beck at (301) 713–2347.

FOR FURTHER INFORMATION CONTACT: Michael Clark or Jessica Beck at (301) 713–2347, or Jackie Wilson at (240) 338–3936.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated HMS FMP is implemented by regulations at 50 CFR part 635.

On May 7, 2008 (73 FR 25665), NMFS published a NOI that summarized the 2007 Small Coastal Shark (SCS) stock assessment conducted for Atlantic sharpnose, blacknose, bonnethead, and finetooth sharks. The NOI also described NMFS' determination as to the status of these stocks based on the results of the 2007 stock assessment, including the determination that blacknose sharks are overfished with overfishing occurring. As a result of this determination, NMFS is taking steps to amend current shark management measures via a third FMP amendment to the 2006 Consolidated HMS FMP. NMFS anticipates completing this amendment and any related documents by January 1, 2010. The comment period for the NOI has been extended and now ends at 5 p.m. on October 31, 2008. Additionally, NMFS now announces the availability of an issues and options presentation describing potential measures for inclusion in Amendment 3 to the 2006 Consolidated HMS FMP (see **ADDRESSES**).

Request for Comments

Four scoping meetings will be held (see Table 1 for meeting dates, times, and locations) to provide the opportunity for public comment on potential SCS shark management measures. These comments will be used to assist in the development of the upcoming amendment to the 2006 Consolidated HMS FMP. Specifically, NMFS requests comments on commercial SCS management options including, but not limited to, quota levels, establishing regions and regional and seasonal quotas, trip limits, minimum sizes, quota monitoring, authorized gears, permit structure, and prohibited species. In addition, NMFS is seeking comments on recreational SCS management options including, but not limited to, retention limits, minimum sizes, authorized gears, and landing requirements. Comments are also requested on SCS management measures to reduce fishing mortality of blacknose sharks in shrimp trawl fisheries as bycatch in these fisheries contributes to a significant proportion of fishing mortality for this species.

NMFS also requests comments on management issues concerning other shark species, including common thresher, hammerheads, ragged-tooth, and smooth dogfish sharks as well as the addition of deepwater sharks to a management unit, improving compliance with HMS regulations, enhanced Vessel Monitoring Systems (VMS), dealer reporting requirements, and quota monitoring. NMFS also seeks comments on display quotas and collection of sharks through exempted fishing permits, display permits, and scientific research permits.

Comments received on this action will assist NMFS in determining the options for rulemaking to conserve and manage shark resources and fisheries, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP.

TABLE 1. DATES, TIMES, AND LOCATIONS OF THE FOUR SCOPING MEETINGS.

Date	Time	Meeting Locations	Address
July 30, 2008	5:30 – 7:30 p.m.	Freeport Branch Library	410 Brazosport Boulevard, Freeport, TX 77541
Aug 27, 2008	6 – 8 p.m.	NOAA Fisheries Service, Southeast Regional Office	263 13th Avenue South, Saint Petersburg, FL 33701
Aug 28, 2008	5:30 – 7:30 p.m.	Fort Pierce Library	101 Melody Lane, Fort Pierce, FL 34950
Oct 9, 2008	3 – 5 p.m.	NOAA Fisheries Service, Northeast Regional Office	1 Blackburn Drive, Gloucester, MA 01930

In addition to the four scoping meetings, NMFS will also present the issues and options presentation to the five Atlantic Regional Fishery Management Councils and the Atlantic and Gulf States Marine Fisheries Commissions during the public comment period. Please see the Councils' and Commissions' summer

and fall meeting notices for dates, times, and locations. Finally, NMFS also expects to present the issues and options presentation at the fall 2008 HMS Advisory Panel (AP) meeting. The actual date and location of the AP meeting will be announced in a future **Federal Register** notice.

Scoping Meetings Code of Conduct

The public is reminded that NMFS expects participants at the scoping meetings to conduct themselves appropriately. At the beginning of each meeting, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the meeting room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; attendees may not interrupt one another, etc.). The NMFS representative will structure the meeting so that all attending members of the public will be able to comment, if they so choose. Attendees are expected to respect the ground rules, and those that do not will be asked to leave the meeting.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jessica Beck (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting.

Dated: June 25, 2008.

Emily H. Menashes

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–15053 Filed 7–1–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XI30

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application submitted by the Massachusetts Division of Marine Fisheries (MADMF) contains all of the required information and warrants further consideration. The Assistant Regional Administrator has made a preliminary determination that the activities authorized under this EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies and Spiny Dogfish Fishery Management Plans (FMPs). However, further review and consultation may be necessary before a final determination is made to issue an EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow one commercial fishing vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. This EFP, which would enable researchers to study the effects of a spiny dogfish excluder grate within a raised footrope whiting trawl, would grant exemptions from the NE multispecies regulations as follows: Gear restrictions while fishing in the Gulf of Maine (GOM) Regulated Mesh Area (RMA), Northeast (NE) multispecies days-at-sea (DAS) effort control measures, and NE multispecies minimum fish sizes for sampling purposes only.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before July 17, 2008.

ADDRESSES: You may submit written comments by any of the following methods:

- Email: *DA8–141@noaa.gov*. Include in the subject line ''Comments on MADMF whiting fishery EFP.''
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on MA MADMF whiting fishery EFP, DA8–141.''
- Fax: (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Emily Bryant, Fishery Management Specialist, 978–281–9244.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted on May 29, 2008, by David Chosid, the conservation engineering project leader at MADMF, for a project funded by the Northeast Consortium. The primary goal of this study is to investigate the effects of an experimental excluder grate in order to reduce catch rates of spiny dogfish and maximize the catch rates of whiting, using a raised footrope whiting trawl. The results of this research could be submitted to the New England Fishery Management Council to provide information that could be used to enhance the management of the whiting and spiny dogfish fisheries.

The project is proposed to be conducted from July 2008 through September 2008. One fishing industry collaborator would conduct a total of 70 1-hour tows using the excluder grate in a raised footrope whiting trawl over the course of 14 trips, conducting 5 tows per trip. The vessel would use a 2.5–inch (6.4–cm) diamond codend mesh and, with the exception of the spiny dogfish grate, the gear would be configured as a standard raised footrope trawl. All experimental tows would occur between 42°12′ W. long. and 42°30′ W. long. in statistical area 514. Fishing would occur along the western edge of Stellwagen Bank National Marine Sanctuary, but not within it. No testing would occur in closed areas or during rolling closures. An underwater camera would be attached to the net to observe the behavior of spiny dogfish and whiting. Catches in the codend would be quantified. MADMF would have at least one staff member on board the vessel at all times during the experimental tows.

Due to the small mesh size used in the whiting fishery, this activity would require an exemption from gear restrictions while fishing in the GOM RMA found at § 648.80(a)(3)(i). The researchers are requesting permission to fish outside of the small mesh exemption areas and time restrictions in order to increase interactions with the project's target species, spiny dogfish. Based on industry recommendations, whiting and spiny dogfish are expected to be inrelatively high abundance in the proposed research location. The requested exemption would help ensure that adequate densities of fish are present to conduct valid testing and provide sound statistical evidence of gear performance within that area. An exemption from the use of NE multispecies DAS at § 648.82(a) is necessary because, due to the small mesh size of the raised footrope trawl, landing NE multispecies under the DAS possession limits would otherwise be prohibited and thus inconsistent with the purpose of charging DAS. In lieu of fishing under a NE multispecies DAS, the project must adhere to a multispecies bycatch cap of 5 percent of the total weight of fish caught overall during the course of the research. This percentage is the standard percentage used as a criterion to qualify an

exempted fishery within regulated mesh areas. Because one of the research goals is to use the information to expand the whiting fishery exemption area, staying within this 5–percent multispecies bycatch cap would be useful for future management decisions based on this research. No NE multispecies would be landed for sale, with the exception of whiting. Additionally, this EFP would include an exemption from multispecies minimum size limits at § 648.86 for sampling purposes only. This exemption would allow sampling of undersized species prior to their discard.

Whiting caught during the research would be landed and sold, up to the current possession limit, to provide additional funding for the project. All other organisms, including whiting with high expected survival return rates, would be released as quickly and carefully as practicable. The applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 26, 2008.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–14943 Filed 7–1–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XI66

Marine Mammals; File No. 545–1761

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; withdrawal of amendment request.

SUMMARY: Notice is hereby given that the North Gulf Oceanic Society (Craig O. Matkin, Principal Investigator), 2030 Mary Allen Avenue, Homer, AK 99603 has withdrawn its application for an amendment to Permit No. 545–1761–00 for use of a mini-helicopter during killer whale (*Orcinus orca*) research.

ADDRESSES: The documents related to this action are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On June 6, 2008 a notice was published in the **Federal Register** (73 FR 32307) that an application for an amendment had been filed by North Gulf Oceanic Society. The permit holder requested authorization to use a mini-helicopter, during an opportunistic, limited time period in Alaska during August/September 2008. The applicant has withdrawn the amendment request from further consideration.

Dated: June 27, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–15050 Filed 7–1–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XI76

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: This notice advises the public that the Western Pacific Fishery Management Council (Council) will convene a meeting of the Hawaii Archipelago Regional Ecosystem Advisory Committee (REAC) in Honolulu, HI.

DATES: The Hawaii Archipelago Regional Ecosystem Advisory Committee meeting will be held Thursday, July 17, 2008. For the specific date, time, and agenda for the meeting, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting of the Hawaii Archipelago Regional Ecosystem Advisory Committee will be held at the Council Office, 1164 Bishop St. Suite 1400, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The date, time and agenda for the meeting is as follows:

Thursday, July 17, 2008, 9 a.m. - 5 p.m.

1. Welcome and Introduction of Members
2. Approval of Draft Agenda
3. Update on Federal Fisheries Management Actions
   a. Main Hawaiian Islands bottomfish Management
   b. Summary of Pelagic Fishery Management Actions
   c. Discussion
4. Coastal Ecosystems
   a. Fresh Water Use and Diversion in Hawaii
   b. Characterization of Fish and Benthic Organisms in Pearl Harbor
5. Guest Presentations
   a. Review of Global Sea Level Rise: global factors and local impacts
   b. Pacific Ocean Productivity Modeling
   c. Discussion
6. Community Marine Management Forum
   a. Aha Moku Process
   b. Discussion
7. Public Comments
8. REAC Discussion and Action

The order in which agenda items are addressed may change. Public comment periods will be provided throughout each agenda. The Regional Ecosystem Advisory Committee will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 26, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–14936 Filed 7–1–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XI62

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that a 1-year Letter of Authorization (LOA) has been issued to the Monterey Bay National Marine Sanctuary (MBNMS) to incidentally take, by Level B harassment only, California sea lions (*Zalophus californianus*) and Pacific harbor seals (*Phoca vitulina*) incidental to professional fireworks displays within the MBNMS in California waters.

DATES: This authorization is effective from July 4, 2008, through July 3, 2009.

ADDRESSES: The LOA and supporting documentation are available for review in the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, by contacting one of the individuals listed here (**FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address and at the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Jaclyn Daly, or Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, or Monica DeAngelis, Southwest Regional Office, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Authorization shall be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of California sea lions and Pacific harbor seals, by Level B harassment, incidental to commercial fireworks displays within the Monterey Bay National Marine Sanctuary (MBNMS) became effective on July 4, 2006, and remain in effect until July 3, 2011. For detailed information on this action, please refer to the original **Federal Register** notice (71 FR 40928, July 19, 2006). These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals during the fireworks displays within the Sanctuary boundaries. This will be the third LOA issued pursuant to these regulations.

Summary of Request

On February 27, 2008, NMFS received a request for a LOA pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of marine mammals incidental to fireworks displays at the MBNMS. Justification for conducting fireworks displays within the MBNMS can be found in the proposed rule (71 FR 25544, May 1, 2006).

Summary of Activity and Monitoring Under the Current LOA

For the City of Monterey Independence Day Fireworks Celebration, MBNMS was required to: (i) conduct counts of marine mammals present within the fireworks impact area immediately before and one day after the event; (ii) conduct behavioral observations of marine mammals present during the display; and (iii) conduct NMFS-approved acoustic monitoring of sound levels for the duration of the event. The regulations set forth in 50 CFR 216.115 (b)(1–2) specified that the behavioral census and acoustic study were one-time events. To fulfill these requirements, MBNMS contracted with a private environmental consulting firm to conduct the acoustic and behavioral study and submitted a 91–page report titled, ''Marine Mammal Acoustic and Behavioral Monitoring for the Monterey Bay National Marine Sanctuary Fireworks Display 4 July 2007.'' to NMFS on November 8, 2007. Following is a summary of that report.

Acoustic Monitoring

The acoustic technician used two separate systems to monitor sound levels in the environment on July 4, 2007. The first system, customized for recording low frequency sounds associated with impulsive noise such as explosions, consisted of a digital audio tape recorder and a microphone with a low frequency cut-off. The second acoustic monitoring system, a sound level meter, measured the sound pressure associated with fireworks shell detonations during the display.

Acoustic monitoring began at 6 p.m. on July 4, 2007. Consultants placed the monitoring equipment at the east end of the U.S. Coast Guard (USCG) pier approximately 800 meters from the fireworks launch site to measure ambient noise, sea lion vocalizations, fireworks detonations, and aircraft noise. From 6 p.m. to 9 p.m. PDT, the average sound level measured over one hour (Leq 1 hour) ranged from 58.8 to 59 decibels (dB) and included sounds from sea lions barking, random fireworks in the local area, and recreational boat traffic.

The fireworks display began at 9:15 p.m. PDT with two sets of fireworks detonations and ended with a grand finale of multiple explosions at 9:35 p.m. PDT. The average sound level measured during the hour containing the fireworks display was 72.9 dB (Leq 1 hour), approximately 14.0 dB greater than ambient levels recorded before the display.

During a fireworks display, aerial shells are launched from tubes (called mortars) to altitudes of 200 to 1,000 feet above sea level. As the shell travels skyward, a time-delay secondary fuse is burning that eventually ignites a burst charge at a predetermined altitude. When the burst charge detonates, it ignites and scatters incendiary chemicals that spectators view as fireworks. Fireworks launch noises are known to cause a startle response or initiate a flight to water response in marine mammals.

Peak sound level (peak) is the greatest instantaneous sound level reached during a sound event and is denoted in the units of Pascals (Pa). The loudest sound recorded during the event was associated with a detonation of a 10–inch shell (9:18 p.m. PDT) measured at 133.9 dB re: 20 µPa (peak). Sound exposure level (SEL) is a measure of the total sound energy in a sound event if that event could be compressed into one second. The detonation of the 10–inch shell had an unweighted SEL of 105.0 dB re: $(20\ \mu Pa)^2$ -s. The second loudest sound recorded was associated with an 8–inch shell (9:23 p.m. PDT) measured at 127.0 dB re: 20 µPa (peak) with an unweighted SEL of 90.1 dB re: $(20\ \mu Pa)^2$ -s.

Overall, the fireworks launch noises generated in the display were low- to mid-frequency and ranged from 97 to 107 dB re: 20 µPa and the majority of the fireworks detonations ranged from 112 to 124 dB re: 20 µPa.

Behavioral Monitoring

A NMFS-approved marine mammal observer conducted a visual census of the California sea lion and Pacific harbor seal haulout sites on July 4, 2007. The observer conducted the census aboard the MBNMS vessel P/B Shark Cat in the vicinity of the southern side of the jetty and the western end of Monterey Harbor. The observer used high quality binoculars during the daytime and night vision goggles during night time hours. The observer counted species present; recorded the location, age, class, and gender of the species; and measured tidal height, wind speed, and air temperature.

Visual monitoring for California sea lions began at 4:27 p.m. PDT on July 4, 2007, and continued until 11:05 p.m. PDT, almost two hours after the conclusion of the fireworks display. Visual monitoring for Pacific harbor seals began at 6:50 p.m. and ended at 10:47 p.m. PDT. The weather and harbor state provided optimal conditions for both daytime and night observations.

Pre-Event Monitoring

Pre-event behavioral monitoring for California sea lions began at 4:27 p.m. and continued to 10:45 p.m. PDT. Most sea lions were hauled out on the north and south sides of the jetty to the east of the USCG pier. The observer enumerated a total of 258 sea lions located on the north (n=115) and south (n=133) sides of the jetty and underneath the USCG pier (n=10) from 7:40 to 8:18 p.m. PDT. Most were yearlings or juveniles (2 to 4 years old). Two sub adult males (approximately 5 to 6 years old) were also observed and appeared to be practicing holding a water territory. With the exception of the sub adult males, the observer found it difficult to determine the gender of the other sea lions. For the next thirty minutes, the number of sea lions hauled out was steady (n=258) until approximately 8:45 p.m. PDT when several boats passed by the end of the jetty and shot off their own fireworks and firecrackers, causing 86 sea lions to enter the water. At this point, the number of seal lions hauled out on the jetty decreased to a total of 172, with 59 sea lions on the north side of the jetty and 103 seal lions on the south side. The number of sea lions hauled out by the USCG pier remained constant at ten.

Pre-event behavioral monitoring for the Pacific harbor seals began at 6:50 p.m. PDT and continued to 8:38 p.m. PDT. From 6:50 to 8 p.m. PDT, eight harbor seals were hauled out on exposed rocks just offshore of the western end of the harbor. As the tide was up to 0.8 meters, there were few places for the harbor seals to haul out. At 8:38 p.m. PDT, the observer recorded four harbor seals hauled out and two harbor seals in the water.

Monitoring During the Display

Behavioral monitoring during the fireworks display began at 9:16 p.m. and continued until 9:37 p.m. PDT. By 9:16 p.m. PDT, approximately 166 sea lions had already flushed from the jetty and under the USCG pier most likely due to recreational boaters shooting fireworks near the jetty, kayakers, and extraneous fireworks noise. This left only six sea lions (2 to 3 year olds) resting under the USCG pier at the start of the fireworks display. By the fourth fireworks detonation, all remaining sea lions had entered the water. This last flush is likely correlated with an 8–inch shell detonated at 9:16 p.m. PDT. Despite the detonations, the observer noted that the sea lions entered the water at a relatively slow rate without injury.

There were 18 different instances of sea lion vocalizations recorded throughout the fireworks display. The first recording of sea lion vocalizations occurred at 9:19 p.m. PDT, one second after an explosion with crackles. The last group of vocalizations was recorded at 9:36 p.m. PDT, about one minute after the fireworks finale.

The observer reported that all of the remaining harbor seals at the western end of the harbor had flushed at the beginning of the fireworks display after hearing the first set of detonations.

Post-Event Monitoring

Post-event behavioral monitoring of the sea lion sites began at 9:37 p.m. PDT. The first sea lion (a sub-adult male) to return to the jetty hauled out at 9:55 p.m. PDT, approximately 21 minutes after the conclusion of the fireworks. According to the report, it was practicing holding a territory at the end of the jetty. By 10:30 p.m. PDT, the sub-adult male was accompanied by three additional sea lions. No information was given as to the age, gender, or class of the three. The observer noted that no sea lions returned to the USCG pier (the last occupied haulout site for sea lions pre-event) after the fireworks display.

Behavioral monitoring of the harbor seal site continued until 10:47 p.m. PDT, 70 minutes after the conclusion of the fireworks display. No animals were observed in the water nor on land.

On July 5, 2007 observers conducted a follow-up census from 8:10 to 09:12 a.m. PDT. The census revealed up to 291 California sea lions and 31 harbor seals at their respective haul out sites. No injured or dead animals were observed that day.

These data indicate that California sea lions and Pacific harbor seals were temporarily displaced from haulout sites during the City of Monterey Independence Day Fireworks Celebration. Several factors contributed to displacement including: noise associated with recreational boaters shooting fireworks near the jetty; increased presence of kayakers in the harbor; extraneous fireworks in the local area; and the display coinciding with a high tide leaving smaller areas for haulout. Acoustic data indicated that, although sea lions flushed into the water, they remained in the harbor during the fireworks display as the recording equipment captured over 18 instances of sea lion vocalizations during the display. In conclusion, the fireworks display caused a short-term disruption in behavior as the sea lions and harbor seals continued to use the haul out sites post event.

In addition to the acoustic and behavioral studies conducted during the

City of Monterey Independence Day Fireworks Celebration, the MBNMS submitted an annual monitoring report on four other professional fireworks displays at MBNMS in 2007. A summary of that report follows.

For each display, observers conducted pre-event surveys to document abundance and distribution of local marine mammal populations within the fireworks area. Following the fireworks display, observers conducted post-event monitoring to record the presence of injured or dead marine mammals, and other wildlife. Pre-event monitoring of the Cambria Independence Day Fireworks on July 3 found no animals present at the site and a post-event census on July 5 found no dead or injured mammals or birds. Observers monitored the Pillar Point Harbor area for the Half Moon Bay Independence Day Fireworks on July 4 and recorded one harbor seal, one sea otter (*Enhydra lutris*), and 712 brown pelicans (*Pelecanus occidentalis*) pre-event. Post-event monitoring on July 5 revealed no dead or injured mammals or birds. The Pacific Grove Feast of Lanterns Fireworks display consisted of enumerating all marine mammals observed within 400 meters of the fireworks launch site. On July 27, observers found eight harbors seals, one sea otter and reported no dead or injured mammals post event on July 29.

In summary, the total number of potentially harassed animals was 258 sea lions and 17 harbor seals for all fireworks displays. No dead or injured marine mammals were reported for all events. Similar to the results of the 2006 LOA monitoring report, these results support NMFS' initial findings that fireworks display will result in no more than Level B harassment of small numbers of California sea lions and harbor seals. These effects are limited to short-term behavioral changes, including temporary abandonment of haulouts to avoid sound and light flashes of professional fireworks displays.

Authorization

NMFS has issued an LOA to MBNMS authorizing the Level B harassment of marine mammals incidental to the coastal commercial fireworks display within the Sanctuary. Issuance of this LOA is based on the results of the MBNMS 2007 monitoring report which verify that the total number of potentially harassed sea lions and harbor seals was well below the authorized limits as stated in the final rule (71 FR 40928, July 19, 2006). Based on these findings and the information discussed in the preamble to the final rule, the activities described under this LOA will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses. No mortality or injury of affected species is anticipated.

Dated: June 26, 2008.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–15051 Filed 7–1–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 260. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 260 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: *Effective Date:* July 1, 2008.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 259. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows.

Dated: June 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 260 ARE UPDATES TO THE RATES FOR COPPER CENTER, CRAIG, DELTA JUNCTION, FT GREELY, GLENNALLEN, DILLINGHAM, HEALY, JUNEAU, KETCHIKAN, KLAWOCK, SKAGWAY, WRANGELL, KOTZEBUE, PETERSBURG, SEWARD, SITKA-MT. EDGECUMBE, AND WASILLA, ALASKA; TINIAN, NORTHERN MARIANA ISLANDS; GUAM; MIDWAY ISLANDS; AND WAKE ISLAND.				
ALASKA				
ADAK	120	79	199	07/01/2003
ANCHORAGE [INCL NAV RES]				
05/01 - 09/15	181	97	278	04/01/2007
09/16 - 04/30	99	89	188	04/01/2007
BARROW	159	95	254	05/01/2002
BETHEL	135	82	217	06/01/2007
BETTLES	135	62	197	10/01/2004
CLEAR AB	90	82	172	10/01/2006
COLD BAY	90	73	163	05/01/2002
COLDFOOT	165	70	235	10/01/2006
COPPER CENTER				
05/01 - 09/30	143	84	227	07/01/2008
10/01 - 04/30	89	79	168	07/01/2008
CORDOVA				
05/01 - 09/30	95	78	173	06/01/2007
10/01 - 04/30	85	77	162	06/01/2007
CRAIG				
05/16 - 09/30	236	80	316	07/01/2008
10/01 - 05/15	151	71	222	07/01/2008
DEADHORSE	95	67	162	05/01/2002
DELTA JUNCTION	135	80	215	07/01/2008
DENALI NATIONAL PARK				
06/01 - 08/31	122	78	200	07/01/2008
09/01 - 05/31	70	72	142	07/01/2008
DILLINGHAM				
04/15 - 10/15	185	76	261	07/01/2008
10/16 - 04/14	155	73	228	07/01/2008
DUTCH HARBOR-UNALASKA	121	84	205	04/01/2006
EARECKSON AIR STATION	90	77	167	06/01/2007
EIELSON AFB				
05/01 - 09/15	169	95	264	02/01/2007
09/16 - 04/30	75	86	161	02/01/2007
ELMENDORF AFB				
05/01 - 09/15	181	97	278	04/01/2007
09/16 - 04/30	99	89	188	04/01/2007
FAIRBANKS				
05/01 - 09/15	169	95	264	02/01/2007
09/16 - 04/30	75	86	161	02/01/2007
FOOTLOOSE	175	18	193	06/01/2002
FT. GREELY	135	80	215	07/01/2008
FT. RICHARDSON				
05/01 - 09/15	181	97	278	04/01/2007
09/16 - 04/30	99	89	188	04/01/2007

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
FT. WAINWRIGHT				
05/01 - 09/15	169	95	264	02/01/2007
09/16 - 04/30	75	86	161	02/01/2007
GLENNALLEN				
05/01 - 09/30	143	84	227	07/01/2008
10/01 - 04/30	89	79	168	07/01/2008
HAINES				
04/01 - 09/30	109	75	184	06/01/2007
10/01 - 03/31	89	73	162	06/01/2007
HEALY				
06/01 - 08/31	122	78	200	07/01/2008
09/01 - 05/31	70	72	142	07/01/2008
HOMER				
05/15 - 09/15	131	84	215	07/01/2007
09/16 - 05/14	79	78	157	07/01/2007
JUNEAU				
05/01 - 09/30	129	85	214	07/01/2008
10/01 - 04/30	85	80	165	07/01/2008
KAKTOVIK	165	86	251	05/01/2002
KAVIK CAMP	150	69	219	05/01/2002
KENAI-SOLDOTNA				
05/01 - 08/31	129	92	221	04/01/2006
09/01 - 04/30	79	87	166	04/01/2006
KENNICOTT	249	110	359	04/01/2007
KETCHIKAN				
05/01 - 09/30	140	79	219	07/01/2008
10/01 - 04/30	98	75	173	07/01/2008
KING SALMON				
05/01 - 10/01	225	91	316	05/01/2002
10/02 - 04/30	125	81	206	05/01/2002
KLAWOCK				
05/16 - 09/30	236	80	316	07/01/2008
10/01 - 05/15	151	71	222	07/01/2008
KODIAK				
05/01 - 09/30	123	91	214	04/01/2006
10/01 - 04/30	99	88	187	04/01/2006
KOTZEBUE	179	93	272	07/01/2008
KULIS AGS				
05/01 - 09/15	181	97	278	04/01/2007
09/16 - 04/30	99	89	188	04/01/2007
MCCARTHY	249	110	359	04/01/2007
MCGRATH	165	69	234	10/01/2006
MURPHY DOME				
05/01 - 09/15	169	95	264	02/01/2007
09/16 - 04/30	75	86	161	02/01/2007
NOME	130	96	226	04/01/2008
NUIQSUT	180	53	233	05/01/2002
PETERSBURG	100	71	171	07/01/2008
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PORT ALSWORTH	135	88	223	05/01/2002
PRUDHOE BAY	95	67	162	05/01/2002
SELDOVIA				
05/15 - 09/15	131	84	215	07/01/2007
09/16 - 05/14	79	78	157	07/01/2007
SEWARD				
05/01 - 09/30	171	85	256	07/01/2008
10/01 - 04/30	89	77	166	07/01/2008
SITKA-MT. EDGECUMBE				
05/01 - 09/30	125	80	205	07/01/2008
10/01 - 04/30	99	77	176	07/01/2008
SKAGWAY				
05/01 - 09/30	140	79	219	07/01/2008
10/01 - 04/30	98	75	173	07/01/2008
SLANA				
05/01 - 09/30	139	55	194	02/01/2005
10/01 - 04/30	99	55	154	02/01/2005
SPRUCE CAPE				
05/01 - 09/30	123	91	214	04/01/2006
10/01 - 04/30	99	88	187	04/01/2006
ST. GEORGE	129	55	184	06/01/2004
TALKEETNA	100	89	189	07/01/2002
TANANA	130	96	226	04/01/2008
TOGIAK	100	39	139	07/01/2002
TOK				
05/01 - 09/30	109	69	178	02/01/2007
10/01 - 04/30	90	67	157	02/01/2007
UMIAT	350	35	385	10/01/2006
VALDEZ				
05/01 - 10/01	149	87	236	04/01/2007
10/02 - 04/30	79	80	159	04/01/2007
WASILLA				
05/01 - 09/30	144	89	233	07/01/2008
10/01 - 04/30	89	83	172	07/01/2008
WRANGELL				
05/01 - 09/30	140	79	219	07/01/2008
10/01 - 04/30	98	75	173	07/01/2008
YAKUTAT	100	71	171	06/01/2007
[OTHER]	90	77	167	02/01/2007
AMERICAN SAMOA				
AMERICAN SAMOA	122	73	195	12/01/2005
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	80	215	07/01/2008
HAWAII				
CAMP H M SMITH	177	106	283	05/01/2008
EASTPAC NAVAL COMP TELE AREA	177	106	283	05/01/2008
FT. DERUSSEY	177	106	283	05/01/2008
FT. SHAFTER	177	106	283	05/01/2008
HICKAM AFB	177	106	283	05/01/2008
HONOLULU	177	106	283	05/01/2008

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ISLE OF HAWAII: HILO	112	104	216	06/01/2007
ISLE OF HAWAII: OTHER	180	104	284	06/01/2007
ISLE OF KAUAI	198	109	307	06/01/2007
ISLE OF MAUI	160	101	261	05/01/2008
ISLE OF OAHU	177	106	283	05/01/2008
KEKAHA PACIFIC MISSILE RANGE FAC	198	109	307	06/01/2007
KILAUEA MILITARY CAMP	112	104	216	06/01/2007
LANAI	269	124	393	06/01/2008
LUALUALEI NAVAL MAGAZINE	177	106	283	05/01/2008
MCB HAWAII	177	106	283	05/01/2008
MOLOKAI	139	94	233	06/01/2008
NAS BARBERS POINT	177	106	283	05/01/2008
PEARL HARBOR	177	106	283	05/01/2008
SCHOFIELD BARRACKS	177	106	283	05/01/2008
WHEELER ARMY AIRFIELD	177	106	283	05/01/2008
[OTHER]	112	104	216	05/01/2008
MIDWAY ISLANDS				
MIDWAY ISLANDS				
INCL ALL MILITARY	125	45	170	07/01/2008
NORTHERN MARIANA ISLANDS				
ROTA	129	91	220	05/01/2006
SAIPAN	121	98	219	06/01/2007
TINIAN	138	71	209	07/01/2008
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				
AGUADILLA	75	64	139	11/01/2007
BAYAMON	195	82	277	10/01/2007
CAROLINA	195	82	277	10/01/2007
CEIBA				
05/01 - 11/30	155	57	212	08/01/2006
12/01 - 04/30	185	57	242	08/01/2006
FAJARDO [INCL ROOSEVELT RDS NAVS				
05/01 - 11/30	155	57	212	08/01/2006
12/01 - 04/30	185	57	242	08/01/2006
FT. BUCHANAN [INCL GSA SVC CTR,	195	82	277	10/01/2007
HUMACAO				
05/01 - 11/30	155	57	212	08/01/2006
12/01 - 04/30	185	57	242	08/01/2006
LUIS MUNOZ MARIN IAP AGS	195	82	277	10/01/2007
LUQUILLO				
05/01 - 11/30	155	57	212	08/01/2006
12/01 - 04/30	185	57	242	08/01/2006
MAYAGUEZ	109	77	186	11/01/2007
PONCE	139	83	222	11/01/2007
SABANA SECA [INCL ALL MILITARY]	195	82	277	10/01/2007
SAN JUAN & NAV RES STA	195	82	277	10/01/2007
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
04/15 - 12/14	135	92	227	05/01/2006
12/15 - 04/14	187	97	284	05/01/2006
ST. JOHN				
04/15 - 12/14	163	98	261	05/01/2006
12/15 - 04/14	220	104	324	05/01/2006
ST. THOMAS				
04/15 - 12/14	240	105	345	05/01/2006
12/15 - 04/14	299	111	410	05/01/2006
WAKE ISLAND				
WAKE ISLAND	152	12	164	07/01/2008

[FR Doc. E8–14774 Filed 7–1–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Deadline for Submission of Donation Applications for the ex-CHARLES F. ADAMS (DDG 2)

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DON) hereby gives notice of the receipt of one application for the donation of the guided missile destroyer ex-CHARLES F. ADAMS (DDG 2), located at the NAVSEA Inactive Ships On-site Maintenance Office, Philadelphia, PA, and the deadline for submission of additional applications for the ship.

DATES: The deadline for submission of additional applications is January 30, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Carvalho of the Naval Sea Systems Command, Navy Inactive Ships Program (PMS 333), *telephone number:* 202–781–0485. Ship donation applications and other mailed correspondence should be addressed to: The Columbia Group, 1201 M Street SE., Suite 010, Washington, DC 20003; marked for Ms. Gloria Carvalho (PMS 333).

SUPPLEMENTARY INFORMATION: Under the authority of 10 U.S.C. Section 7306, eligible recipients for the transfer of a vessel for donation include: (1) Any State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof; (2) the District of Columbia; or (3) any organization incorporated as a non-profit entity under section 501 of the Internal Revenue Code.

The transfer of a vessel for donation under 10 U.S.C. Section 7306 shall be at no cost to the United States Government.

The donee will be required to maintain the vessel as a static display in a condition that is satisfactory to the Secretary of the Navy.

Qualified organizations must submit a complete application to the DON by January 30, 2009, comprised of a business/financial plan, a technical plan (includes a towing plan, mooring plan, maintenance plan and environmental plan), a curatorial/museum plan, and a community support plan (includes information concerning support from the community and benefit to the DON).

Complete application requirements are available on the DON Ship Donation Web page located at: *http://peoships.crane.navy.mil/donation/.*

The application must address the following areas:

a. *Business/Financial Plan:* The Business/Financial Plan must provide detailed evidence of firm financing to offset all costs associated with the donation including: mooring, towing, environmental surveys and cleanup, dredging, museum development, maintenance, refurbishment of the vessel, pier, insurance, legal services, etc. Firm financing is defined as available money to ensure the first five years of operation and future stability of the museum for long-term operation.

This can include pledges, loans, gifts, bonds (except revenue bonds), funds on deposit at a financial institution, or any combination of the above. The business/financial plan must include start-up costs (all costs incurred before opening) and operating & support costs for the first five years of operation. The applicant must also provide income projections from sources such as individual and group admissions, facility rental fees, and gift shop revenues sufficient to cover the estimated operating expenses.

The plan should also include a detailed marketing plan with visitor projections and demographic information to support the business and financial plan. In addition, the applicant should provide evidence that planning and resources are in place for disposition of the vessel in the event of bankruptcy or inability to properly maintain the vessel.

b. *Technical:* The technical plan is comprised of a Towing Plan, Mooring Plan, Maintenance Plan, and Environmental Plan.

The Towing Plan describes how the vessel will be prepared for tow and safely towed from its present location to the permanent display site proposed by the applicant. The applicant must provide a detailed Towing Plan that complies with all applicable U.S. Navy Tow Manual requirements, which can be found at *http://www.supsalv.org/pdf/towman.pdf.*

The Towing Plan must address ship stability, flooding alarms, dewatering procedures, watertight integrity, condition of propellers and rudders, trim/drafts, boarding crew preparation, tug arrangement, tow route, emergency anchoring system, harbor assist/pilotage, schedule/timeline current tidal condition, weather contingencies, emergency procedures, primary and

secondary tow vessels (padeye/pendant/jewelry).

The Mooring Plan describes how the vessel will be secured at a permanent, long-term mooring location that is acceptable to the Navy. A permanent mooring design must be capable of withstanding a 100-year storm condition without damage to the ship, its mooring system or neighboring facilities. The applicant must provide evidence of availability (at least 10 years) of a facility for permanent mooring of the vessel, either by ownership, existing lease, or by letter from the facility owners indicating a statement of intent to utilize such facilities.

Address any requirement to obtain site-specific permits and/or municipality approvals required for the facility, to include, but not limited to, Port Authority and Army Corps of Engineers approvals/permits, where required. The Mooring Plan should include all necessary information and calculations to assure that the ship will be safely moored, including: details of ship characteristics, design criteria for the site, soils data, bathymetric data, existing conditions, engineering drawings/sketches, calculations of wind and current forces/moments, and cost estimates. The mooring location must be acceptable to the DON and not obstruct or interfere with navigation.

The Environmental Plan describes how the applicant will comply with all Federal, State, and local environmental and public health and safety regulations and permit requirements. The applicant must demonstrate an understanding of environmental requirements and provided detailed information and supporting documents in the following areas: hazardous material; endangered species; dredging disposal; CB handling, removal and Compliance Agreements with EPA; and any other permits that may be required.

The Plan must address current environmental conditions and any change to those conditions that may result from establishing a permanent vessel museum/memorial at the proposed site. Detailed information on Environmental Plan requirements can be found at *http://peoships.crane.navy.mil/Inactiveships/Donation/pdf/environmental_plan_requirements.pdf*.

The Maintenance Plan must describe plans for long-term and short-term maintenance of the vessel, including preservation and maintenance schedule, composition and qualification of professional maintenance staff, cathodic protection system installation, Dry-docking Plan, Underwater Hull Inspection Plan, Fire/Flood/Intrusion Alarm Plan, Emergency Response Plan, Pest Control Plan, and Security Plan.

c. The Curatorial/Museum Plan includes two parts: a Curatorial Plan and a Historic Management Plan. The Curatorial Plan must describe the qualifications for a professional curator (and curator staff, if necessary), including resume or job announcement with prior museum experience and education. The plan must describe how the museum will collect and manage artifacts, including a statement of purpose and description of access, authority, and collection management responsibilities/activities.

The Historic Management Plan must describe the historical context in which the ship will be displayed, as the primary artifact; vessel restoration plans; the historical subject matter which will be dealt with in the exhibits; and tentative exhibits plan.

d. The Community Support Plan must include evidence of local support and regional support. This includes letters of endorsement from adjacent communities and counties, cities, or States. Also describe how the location of the vessel will encourage public visitation and tourism, become an integral part of the community, and how the vessel will enhance community development. The Community Support Plan must also describe the benefit to the DON, including, but not limited to, addressing how the applicant may support DON recruiting efforts, the connection between the DON and the proposed berthing location, how veterans' associations in the area are willing to support the vessel, how the applicant will honor veterans' contributions to the United States, and how the exhibit will commemorate those contributions and showcase Naval traditions.

The relative importance of each area that must be addressed in the donation application is as follows: Business/Financial Plan and Technical Plan are the most important criteria and are equal in importance. Within the Technical Plan, the Mooring Plan is of greatest importance, and the Towing Plan, Maintenance Plan, and Environmental Plan are individually of equal importance but of lesser importance to the Mooring Plan. The Curatorial/Museum Plan and Community Support Plan are of equal importance, but of lesser importance than the aforementioned plans.

Evaluation of applications received by the due date will be performed by the DON to ensure applications are compliant with the minimum acceptable application criteria and requirements. In the event of multiple compliant applications for the same vessel, the DON will perform a comparative evaluation of the applications to determine the best-qualified applicant. The adjectival ratings to be used for each criterion include: Outstanding, Good, Satisfactory, Marginal, and Unsatisfactory. The Secretary of the Navy, or his designee, will make the final donation decision.

The complete application must be submitted in hard copy and electronically on a CD-ROM to the Navy Inactive Ships Program office by January 30, 2009. Mailing address: The Columbia Group, 1201 M Street SE., Suite 010, Washington, DC 20003; marked for Ms. Gloria Carvalho (PMS 333).

Dated: June 26, 2008.

T.M. Cruz,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–14970 Filed 7–1–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Nomadics, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Nomadics, Inc., a revocable, nonassignable, exclusive license to practice in the field of use of chemiluminescent detection of trace chemical analytes that are potential chemical threats to health, welfare, national defense and homeland security, such as chemical warfare agents, explosives, and toxic industrial chemicals (TIC's) that may be released deliberately or accidentally, using a highly sensitive instrument either as a stand alone device or integrated into a device that includes other ICx technologies in the military, homeland security, first responder, law enforcement, and industrial markets in the United States and certain foreign countries, the Government-owned invention described in U.S. Patent No. 6,579,722 entitled ''Chemiluminescence Chemical Detection of Vapors and Device Therefor'', Navy Case No. 76,653 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting

evidence, if any, not later than July 17, 2008.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Rita Manak, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, *telephone:* 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, *e-mail: rita.manak@nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: June 25, 2008.

T.M. Cruz,

Lieutenant, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–14967 Filed 7–1–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 2, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 27, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: Extension of a currently approved collection.

Title: Native American Vocational and Technical Education Program (NAVTEP) Performance Reports (TW) .

Frequency:

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 30.

Burden Hours: 1213.

Abstract: The Native American Vocational and Technical Education Program (NAVTEP) is requesting approval to collect semi-annual and final performance reports from currently funded NAVTEP grantees. This information is necessary to (1) manage and monitor the current grantees, and (2) effectively close-out the grants at the end of their performance periods. The final performance reports will include final budgets, performance/statistical reports, GPRA reports, and final evaluation reports. The data, collected from the performance reports will be used to determine if the grantees successfully met their project goals and objectives, so that NAVTEP staff can close-out the grants in compliance.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 03728. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–15031 Filed 7–1–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.282B and 84.282C]

Charter Schools Program (CSP) Grants to Non-State Educational Agencies for Planning, Program Design, and Implementation and for Dissemination.

ACTION: Correction; Notice correcting date.

SUMMARY: We correct the *Deadline for Intergovernmental Review* date in the notice published on June 16, 2008 (73 FR 33995–34001).

SUPPLEMENTARY INFORMATION: On June 16, 2008, we published a notice in the **Federal Register** (73 FR 33995) inviting applications for new awards for fiscal year (FY) 2008 for the Charter Schools Program (CSP) Grants to Non-State Educational Agencies for Planning, Program Design, and Implementation and for Dissemination. The *Deadline for Intergovernmental Review* date (as published on pages 33995 and 33997) is corrected to September 2, 2008.

FOR FURTHER INFORMATION CONTACT: Erin Pfeltz, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W255, Washington, DC 20202–5970. *Telephone:* (202) 205–3525 or by *e-mail: erin.pfeltz@ed.gov.*

If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document

Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 27, 2008.

Douglas B. Mesecar,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E8–15042 Filed 7–1–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, July 28, 2008, 1 p.m.–5 p.m., Tuesday, July 29, 2008, 8:30 a.m.–4 p.m.

Location: The Center for Hydrogen Research, 301 Gateway Drive, Aiken, SC 29803.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, July 28, 2008

1 p.m. Combined Committee Session.
5:00 p.m. Adjourn.

Tuesday, July 29, 2008

8:30 a.m. Approval of Minutes, Agency Updates.
9:30 a.m. Public Comment Session.
9:45 a.m. Chair and Facilitator Updates.
10:15 a.m. Facility Disposition and Site Remediation Committee Report.
11:15 a.m. Administrative Committee Report.
11:45 a.m. Public Comment Session.
12 p.m. Lunch Break.
1 p.m. Waste Management Committee Report.
2 p.m. Strategic and Legacy Management Committee Report.
2:45 p.m. Nuclear Materials Committee Report.
3:45 p.m. Public Comment Session.
4 p.m. Adjourn.

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, July 28, 2008.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.srs.gov/general/outreach/srs-cab/srs-cab.html.*

Issued at Washington, DC, on June 27, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–14996 Filed 7–1–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Hydrogen and Fuel Cell Technical Advisory Committee (HTAC)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: The Hydrogen and Fuel Cell Technical Advisory Committee (HTAC) was established under section 807 of the Energy Policy Act of 2005 (EPACT), Public Law No. 109–58; 119 Stat. 849. The Federal Advisory Committee Act, Public Law No. 92–463, 86 Stat. 770, requires that agencies publish notice of an advisory committee meeting in the **Federal Register**. To attend the meeting and/or to make oral statements during the public comment period, please e-mail *HTAC@nrel.gov* at least 5 business days before the meeting. Please indicate if you will be attending the meeting both days or a specific day, if you want to make an oral statement on July 23, 2008, and what organization you represent (if appropriate).

DATES: Tuesday, July 22, 2008, from 9 a.m.–6 p.m. and Wednesday, July 23, 2008, from 8:30 a.m.–3 p.m.

ADDRESSES: L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: *HTAC@nrel.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice, information, and recommendations to the Secretary on the program authorized by title VIII of EPACT.

Tentative Agenda (Subject to change; updates will be posted on *http://hydrogen.energy.gov* and copies of the final agenda will be available the date of the meeting). The following items will be covered on the agenda:

- Role of Government Vision and Policy
- Global Competitive Environment
- Discussion of HTAC Vision Statement
- Report on NAS Resources Study
- Discussion of Talking Points for the Next Administration
- Discussion of HTAC Report and Index
- Discussion of Innovative Market Demand Strategies
- Nominations for and/or election of Committee Chair
- Public Comment Period

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the meeting of HTAC and to make oral statements during the specified period for public comment. The public comment period is tentatively scheduled for 2:30 p.m. and 3 p.m. on July 23, 2008. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, e-mail *HTAC@nrel.gov* at least 5 business days before the meeting. Please

indicate if you will be attending the meeting on both days or a particular day, if you want to make an oral statement, and what organization you represent (if appropriate). Members of the public will be heard in the order in which they sign up for the public comment period. Oral comments should be limited to two minutes in length. Reasonable provision will be made to include the scheduled oral statements on the agenda. The chair of the committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business. If you would like to file a written statement with the committee, you may do so either by submitting a hard copy at the meeting or by submitting an electronic copy to *HTAC@nrel.gov.*

Minutes: The minutes of the meeting will be available for public review at *http://www.hydrogen.energy.gov.*

Issued at Washington, DC, on June 26, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–14997 Filed 7–1–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 25, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–103–000.

Applicants: Potomac Electric Power Company, Sempra Energy Trading LLC, The Royal Bank of Scotland plc.

Description: Potomac Electric Power Co et al submits an application for authorization to transfer its RPM Capacity Rights.

Filed Date: 06/23/2008.

Accession Number: 20080625–0054.

Comment Date: 5 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: EC08–104–000.

Applicants: Weyerhaeuser Company, International Paper Company.

Description: Application of Weyerhaeuser Company and International Paper Company for Authorization under Federal Power Act Section 203, Request for Consideration, and Request for Waivers.

Filed Date: 06/24/2008.

Accession Number: 20080625–5004.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 15, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–3834–017.

Applicants: DTE Energy Trading, Inc.

Description: DTE Energy, Trading, Inc submits application for Category 1 Status in All Regions Except the Central Region and submission of Substitute Second Revised Sheet 1A *et al* to Rate Schedule FERC 1 pursuant to Order 697–A.

Filed Date: 06/23/2008.

Accession Number: 20080625–0053.

Comment Date: 5 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: ER98–855–010.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co submits an errata to their 5/23/08 compliance filing to provide proper citation for the Commission's consideration pursuant to Order 697–A.

Filed Date: 06/23/2008.

Accession Number: 20080624–0171.

Comment Date: 5 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: ER01–1011–017; ER01–1335–015; ER01–642–013; ER07–312–005.

Applicants: Redbud Energy LP; Magnolia Energy LP; CottonWood Energy Company LP; Dogwood Energy LLC.

Description: Cottonwood Energy Company, LP *et al* submits notice of change in status.

Filed Date: 06/23/2008.

Accession Number: 20080625–0050.

Comment Date: 5 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: ER03–191–003.

Applicants: Peaker LLC.

Description: Peaker, LLC submits a request for Category 1 Seller classification.

Filed Date: 06/23/2008.

Accession Number: 20080624–0028.

Comment Date: 5 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: ER04–230–036; ER01–1385–033; ER01–3155–024; EL01–45–032.

Applicants: New York Independent System Operator, Inc.; Consolidated Edison Co. of New York, Inc.

Description: Fourteenth quarterly report on progress to resolve the issue of penalty exemptions for grouped generating facilities whose output is metered at a single location during start-up and shutdown period.

Filed Date: 06/20/2008.

Accession Number: 20080620–5207.

Comment Date: 5 p.m. Eastern Time on Friday, July 11, 2008.

Docket Numbers: ER07–426–001; ER06–1257–001; ER05–1398–002; ER03–1085–005.

Applicants: Covanta Delaware Valley, L.P., Covanta Essex Company, Covanta Niagara, L.P., Covanta Union, Inc.

Description: Covanta Delaware Valley, LP et al submits their triennial market power analysis.

Filed Date: 06/20/2008.

Accession Number: 20080624–0040.

Comment Date: 5 p.m. Eastern Time on Friday, July 11, 2008.

Docket Numbers: ER05–658–002.

Applicants: Harvard Dedicated Energy Limited.

Description: Harvard Dedicated Energy Limited submits a filing explaining why they qualify as a Category 1 seller of wholesale electricity in the Northeast region of the United States etc.

Filed Date: 06/20/2008.

Accession Number: 20080624–0041.

Comment Date: 5 p.m. Eastern Time on Friday, July 11, 2008.

Docket Numbers: ER08–686–001.

Applicants: PEPCO Holdings, Inc.

Description: Potomac Electric Power Company responds to the Commission's 5/23/08 letter requesting additional information in support of the PHI Companies' request for a transmission rate incentive etc.

Filed Date: 06/23/2008.

Accession Number: 20080624–0025.

Comment Date: 5 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: ER08–728–001.

Applicants: Florida Power Corporation.

Description: Progress Energy Florida Inc submits its compliance filing which concerns Florida Power Corporation which concerns FPC's cost-based power sales agreement with Seminole Electric Cooperative, Inc.

Filed Date: 06/20/2008.

Accession Number: 20080624–0026.

Comment Date: 5 p.m. Eastern Time on Friday, July 11, 2008.

Docket Numbers: ER08–749–001.

Applicants: Southwestern Public Service Company.

Description: Southwestern Public Service Company informs that on 3/31/08 SPS submitted a rate case filing in their proceeding, pursuant to Section 205 of the Federal Power Act, proposing a rate increase for its full-requirement wholesale customers.

Filed Date: 06/20/2008.

Accession Number: 20080624–0017.

Comment Date: 5 p.m. Eastern Time on Friday, July 11, 2008.

Docket Numbers: ER08–824–001.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits their compliance filing, in compliance with FERC's 6/12/08 Order.

Filed Date: 06/23/2008.

Accession Number: 20080625–0049.

Comment Date: 5 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: ER08–825–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits title page to the Large Generator Interconnection Agreement, Service Agreement 1168.

Filed Date: 06/24/2008.

Accession Number: 20080625–0046.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 15, 2008.

Docket Numbers: ER08–1050–001.

Applicants: Dragon Energy LLC.

Description: Dragon Energy, LLC submits revisions to its application for authorization to make wholesale sales of energy and capacity at negotiated market based rates and proposed Rate Schedule 1.

Filed Date: 06/23/2008.

Accession Number: 20080625–0045.

Comment Date: 5 p.m. Eastern Time on Thursday, July 3, 2008.

Docket Numbers: ER08–1089–001.

Applicants: Port Washington Generating Station LLC.

Description: Port Washington Generating Station, LLC submits a Title Page to their 6/6/08 notification of termination of the Rate Schedule 1.

Filed Date: 06/24/2008.

Accession Number: 20080625–0044.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 15, 2008.

Docket Numbers: ER08–1117–000.

Applicants: DC Energy Southwest, LLC.

Description: DC Energy Southwest, LLC submits FERC Electric Tariff, Original Volume 1.

Filed Date: 06/23/2008.

Accession Number: 20080625–0043.

Comment Date: 5 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: ER08–1125–000.

Applicants: Brookfield Renewable Energy Marketing US.

Description: Application for market-based rate authorization and certain waivers and blanket authorizations and motion for expedited treatment re Brookfield Renewable Energy Marketing U.S. LLC.

Filed Date: 06/23/2008.

Accession Number: 20080625–0041.

Comment Date: 5 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: ER08–1126–000; ER08–1127–000; ER08–1128–000; ER08–1129–000; ER08–1130–000; ER08–1131–000; ER08–1132–000; ER08–1133–000; ER08–1134–000; ER08–1135–000; ER08–1136–000; ER08–1137–000; ER08–1138–000; ER08–1139–000; ER07–100–001.

Applicants: Georgia-Pacific Brewton LLC; GP Big Island, LLC; Brunswick Cellulose, Inc.; Georgia-Pacific Cedar Springs LLC; Georgia-Pacific Consumer Operations LLC; Georgia-Pacific Con Ops LLC Port Hudson; Georgia-Pacific Con Prod LP Green Bay W; Georgia-Pacific Consumer Products LP Mus; Georgia-Pacific Cons Prods LP Naheola; Georgia-Pacific Cons Prods LP Savannah; Georgia-Pacific LLC Crosset; Georgia-Pacific Monticello LLC; Georgia-Pacific Toledo LLC; Leaf River Cellulose, LLC; Koch Supply & Trading, LP.

Description: Georgia-Pacific Brewton LLC et al requests approval of joint market-based rate tariff for fourteen separate qualifying cogeneration facilities that have not sold wholesale electricity in jurisdictional markets etc and also filed a reports that they had no sales or purchases of wholesale electric energy or of natural gas to publishers of price indices.

Filed Date: 06/20/2008.

Accession Number: 20080624–0036; 20080624–0145.

Comment Date: 5 p.m. Eastern Time on Friday, July 11, 2008.

Docket Numbers: ER08–1144–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits revisions to the Amended and Restated Operating Agreement of PJM Interconnection, LLC (Operating Agreement or OA) pursuant to Section 205 of the Federal Power Act etc.

Filed Date: 06/20/2008.

Accession Number: 20080624–0022.

Comment Date: 5 p.m. Eastern Time on Friday, July 11, 2008.

Docket Numbers: ER08–1145–000.

Applicants: Bangor Hydro-Electric Company.

Description: Bangor Hydro-Electric Company submits an informational filing showing the implementation of their formula rate for the charges that became effective on 6/1/08.

Filed Date: 06/20/2008.

Accession Number: 20080624–0034.

Comment Date: 5 p.m. Eastern Time on Friday, July 11, 2008.

Docket Numbers: ER08–1147–000.

Applicants: SG Energy LLC.

Description: SG Energy, LLV submits FERc Electric Tariff, Original Volume 1.

Filed Date: 06/20/2008.

Accession Number: 20080624–0032.

Comment Date: 5 p.m. Eastern Time on Friday, July 11, 2008.

Docket Numbers: ER08–1148–000.

Applicants: Citadel Energy Investments Ltd.

Description: Citadel Energy Investments Ltd submits a Notice of Cancellation of Rate Schedule 1.

Filed Date: 06/23/2008.

Accession Number: 20080624–0031.

Comment Date: 5 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: ER08–1149–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits Petition for Approval of Settlement Agreement.

Filed Date: 06/23/2008.

Accession Number: 20080624–0035.

Comment Date: 5 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: ER08–1150–000.

Applicants: The American Electric Power Service Corp.

Description: AEP Operating Companies submits a second revision to the Interconnection and Local Delivery Service Agreement with the Village of Greenwich.

Filed Date: 06/23/2008.

Accession Number: 20080624–0030.

Comment Date: 5 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: ER08–1151–000.

Applicants: New York Independent System Operator, Inc.

Description: Notification of tariff implementation error and request for a limited tariff waiver of New York Independent System Operator, Inc.

Filed Date: 06/20/2008.

Accession Number: 20080624–0029.

Comment Date: 5 p.m. Eastern Time on Friday, July 11, 2008.

Docket Numbers: ER08–1152–000.

Applicants: Potomac Electric Power Company.

Description: Potomac Electric Power Company submits an unexecuted form of an interconnection agreement, attached as Attachment A hereto, that Pepco and Panda-Brandywine, LP will enter into subject to the satisfaction etc.

Filed Date: 06/23/2008.

Accession Number: 20080624–0024.

Comment Date: 5 p.m. Eastern Time on Monday, July 14, 2008.

Docket Numbers: ER08–1159–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Co submits an amendment to the Transmission Service Agreement with Auburndale Power Partners, LP.

Filed Date: 06/24/2008.

Accession Number: 20080625–0047.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 15, 2008.

Docket Numbers: ER08–1160–000.

Applicants: Sconza Candy Company.

Description: Sconza Candy Company submits Notice of Succession Change of ownership.

Filed Date: 06/25/2008.

Accession Number: 20080625–5014.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 16, 2008.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC08–7–000; FC08–8–000; FC08–9–000.

Applicants: P.P.C. Limited; Atlantic Equipment & Power (Turks and Ca; Belize Electric Company Limited.

Description: Notification of Self-Certification of Foreign Utility Company Status of P.P.C. Limited, et al. under FC08–7, *et al.*

Filed Date: 06/25/2008.

Accession Number: 20080625–5041.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 16, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–14991 Filed 7–1–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8687–5]

Coastal Elevations and Sea Level Rise Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a public meeting of the Coastal Elevations and Sea Level Rise Advisory Committee (CESLAC).

DATES: The meeting will be held on Wednesday, July 30, 2008, from 9:30 a.m. until 3:30 p.m.

ADDRESSES: The meeting will take place via teleconference. Interested parties can access the teleconference as follows. First, dial the following toll free number: (800) 704–9804. Second, enter the following conference code: 913568#. The moderator will begin the conference call.

FOR FURTHER INFORMATION CONTACT: Jack Fitzgerald, Designated Federal Officer, Climate Change Division, Mail Code 6207J, Office of Atmospheric Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *e-mail address: Fitzgerald.jack@epa.gov*, telephone number (202) 343–9336, *fax:* (202) 343–2337.

SUPPLEMENTARY INFORMATION: The purpose of CESLAC is to provide advice on a study titled *Coastal Elevations and Sensitivity to Sea Level Rise* being conducted as part of the U.S. Climate Change Science Program (CCSP). A copy of the study prospectus is available at *http://www.climatescience.gov/Library/sap/sap4–1/default.php.* A copy of the Committee Charter is available at *http://www.fido.gov/facadatabase/.* The meeting will focus on consideration of a draft of the study as well as on possible elements of CESLAC's final report. Draft materials that will be considered in the meeting may be found at *http://www.environmentalinformation.net/CESLAC/* approximately two weeks before the meeting. If a printed copy of the material is needed, please contact Ms. Beth Scherer by: (1) E-mail at *BScherer@stratusconsulting.com*; (2) phone at (202) 466–3731, ext. 236; (3) mail at Stratus Consulting, 1920 L St., NW., Suite 420, Washington, DC 20036. Based on the extent of public participation in previous meetings of CESLAC, thirty minutes of this meeting will be allocated for statements by members of the public. Individuals who are interested in making statements should inform Jack Fitzgerald of their interest by Wednesday, July 23, and provide a copy of their statements for the record. Individuals will be scheduled in the order that their statements of intent to present are received. A minimum of three minutes will be provided for each statement. The maximum amount of time will depend on the number of statements to be made. All statements, regardless of whether there is sufficient time to present them orally, will be included in the record and considered by the committee. To request accommodation of a disability, please also contact Jack Fitzgerald, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: June 26, 2008.

Jack Fitzgerald,

Designated Federal Officer.

[FR Doc. E8–15009 Filed 7–1–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0994; FRL–8370–1]

Registration Review; Biopesticide Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review docket for the pesticide listed in the table in Unit III.A.With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the

statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before September 2, 2008.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although, listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: For information about the pesticides included in this document, contact the specific Regulatory Action Leader (RAL) as identified in the table in Unit III.A. for the pesticide of interest.

For general questions on the registration review program, contact Peter Caulkins , Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6550; fax number: (703) 308–8090; e-mail address: *caulkins.peter@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be periodically reviewed. The goal is a review of a pesticide's registration every 15 years. Under FIFRA section 3(a), a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is periodically reviewing pesticide registrations to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. The implementing regulations establishing the procedures for registration review appear at 40 CFR part 155. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration Review Case Name and Number	Pesticide Docket ID Number	Chemical Review Manager OR RAL, Telephone Number, E-mail Address
L-Lactic Acid; Case # 6062	EPA–HQ–OPP–2008–[insert Docket ID no.]	Andrew Bryceland, (703) 305–6928; *bryceland.andrew@epa.gov*

B. Docket Content

1. *Review dockets*. The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information*. More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm*. Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review*.

3. *Information submission requirements*. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.
- As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 25, 2008.

W. Michael McDavit,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–15012 Filed 7–1–08; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0416; FRL–8367–4]

Alkyl trimethylenediamines, Bioban P-1487, Copper 8-quinolinolate, Napthenate Salts, Octhilinone, and the Trimethoxysilyl Quaternary Ammonium Chloride Compounds Reregistration Eligibility Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decisions (REDs) for the

pesticides Alkyl trimethylenediamines (ATMDs), bioban P-1487, copper 8-quinolinolate, napthenate salts, octhilinone, and the trimethoxysilyl quaternary ammonium chloride compounds and opens a public comment period on these documents. The Agency's risk assessments and other related documents also are available in the dockets for these pesticides. The ATMDs are used as microbicides, bacteriocides, and molluscides. Bioban P-1487 is used as a materials preservative and as a microbial growth inhibitor of slime-forming fungi and bacteria. Copper 8-quinolinolate is used as an algaecide, bactericide and fungicide. The naphthenate salts are used as fungicides, microbiocides/microbiostats, and algaecides. Octhilinone is used as an industrial mildewcide, microbiocide, fungicide and bacteriocide. The quaternary ammonium chloride compounds are used as bacteriastat, fungistat, antimicrobial and algaestat.

EPA has reviewed ATMD, bioban P-1487, copper 8-quinolinolate, napthenate salts, octhilinone, and the trimethoxysilyl quaternary ammonium chloride compounds through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before September 2, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number, chemical name and contact persons, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to EPA–HQ–OPP–2008–0416 and the docket number specific to the pesticide of interest as shown in the table in Unit.II. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: The person listed for the pesticide of interest in the table to Unit.II. below.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed for the pesticide of interest in the table to Unit.II.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at

your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Docket ID Numbers

When submitting comments, please use the docket ID number, and the chemical name for the pesticide of interest, as shown in the table.

Chemical Name	Docket ID Number	Division	Chemical Review Manager, Telephone Number, E-mail Address
ATMD	EPA–HQ–OPP–2007-0537	Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, fax number: (703) 308–8481.	ShaRon Carlisle, (703) 308–6427, *carlisle.sharon@epa.gov*
Bioban P-1487	EPA–HQ–OPP–2007-0402	Do.	Diane Isbell, (703) 308–8154, *isbell.diane@epa.gov*
Copper 8-quinolinolate	EPA–HQ–OPP–2007–0556	Do.	Kathryn Jakob, (703) 305–0012, *jakob.kathryn@epa.gov*
Naphthenate Salts	EPA–HQ–OPP–2007–0589	Do.	Diane Isbell, (703) 308–8154, *isbell.diane@epa.gov*
Octhilinone	EPA–HQ–OPP–2007–0415	Do.	Kathryn Jakob, (703) 305–0012, *jakob.kathryn@epa.gov*
Trimethoxysilyl Quaternary Ammonium Chloride Compounds	EPA–HQ–OPP–2007–0831	Do.	Diane Isbell, (703) 308–8154, *isbell.diane@epa.gov*

III. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed REDs for the pesticides, ATMD, bioban P-1487, copper 8-quinolinolate, napthenate salts, octhilinone, and the trimethoxysilyl quaternary ammonium chloride compounds under section 4(g)(2)(A) of FIFRA.

ATMDs are used in industrial processes and water systems: oilfield/petrochemical injection water systems; industrial recirculating water cooling systems; non-potable industrial waters; other industrial processing water systems; petroleum transport systems, storage systems and subsurface equipment; natural gas well gathering systems and pipelines; and well completion, packer, stimulation and workover fluids to control microbes, bacteria, or mollusks.

Bioban P-1487 is applied to industrial processes and water systems such as metalworking fluids; oil storage tank bottom water, fuel storage tank bottom water; and to diesel oil, fuel oil, gasoline, and kerosene, as a hydrocarbon preservative to inhibit microorganism growth. As a materials preservative, bioban P-1487 is formulated into products such as metal die cast lubricants, corrosion inhibiting metal coatings, mold-release agents, and fuel conditioners.

Copper 8-quinolinolate is used as a materials preservative and as a wood preservative. Examples of materials that can contain copper 8-quinolinolate include in-can paint preservation, pulp and paperboard, kraft paper, adhesives and glues. Copper 8-quinolinolate is also used as an industrial wood preservative (non-pressure dipping/immersion and pressure methods) to control sapstain and to protect against mold and mildew in soft-wood or hard-wood lumber.

The naphthenate salts are used in industrial and commercial wood preservation for non-pressure (dip/brush/spray) and pressure treatments (vacuum/full-cell) used to protect against fungal rot, decay, termites and wood-boring insects in unfinished wood and various fabricated wood products. In addition, textile preservation is limited to industrial textiles and certain military specified treatments for cellulose-based cotton, canvas, tents/tarps, ropes, cordage and nets.

Octhilinone is used as a materials preservative; as an industrial mildewcide for cooling tower and air washer water systems; and as a wood preservative. Examples of materials that can contain octhilinone include fabrics and textiles, coatings, sealants, adhesives, and rubbers and plastics. Octhilinone is also used for metalworking fluid preservation, hydraulic fluid preservation, and industrial process and water systems including air washer water and flow-thru cooling towers. As a wood preservative, octhilinone is used as an antisapstain drench to debarked logs.

The quaternary ammonium chloride compounds are used as materials preservatives for paints (in can), coatings, textiles, sails, ropes, fire hose, concrete additive, roofing materials, filter media and polyurethane foam and cellulose products and cleaning buffers. The chemical is also formulated to provide residual fungistatic activity in household and domestic dwellings on hard non-porous surfaces, bathroom premises (hard non-porous surfaces), and in garbage cans.

EPA has determined that the data base to support reregistration is substantially complete and that products containing ATMD, bioban P-1487, copper 8-

quinolinolate, napthenate salts, octhilinone, and the trimethoxysilyl quaternary ammonium chloride compounds are eligible for reregistration, provided the risks are mitigated either in the manner described in the REDs or by another means that achieves equivalent risk reduction. Upon submission of any required product-specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (either to address concerns identified in the REDs or as a result of product-specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing ATMD, bioban P-1487, copper 8-quinolinolate, napthenate salts, octhilinone, and the trimethoxysilyl quaternary ammonium chloride compounds.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, ATMD, bioban P-1487, copper 8-quinolinolate, napthenate salts, octhilinone, and the trimethoxysilyl quaternary ammonium chloride compounds were reviewed through the modified 4–Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for ATMD, bioban P-1487, copper 8-quinolinolate, napthenate salts, octhilinone, and the trimethoxysilyl quaternary ammonium chloride compounds.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the ATMD, bioban P-1487, copper 8-quinolinolate, napthenate salts, octhilinone, and the trimethoxysilyl quaternary ammonium chloride compounds REDs for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the REDs. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the comment date. These comments will become part of the Agency Docket for ATMD, bioban P-1487, copper 8-quinolinolate, napthenate salts, octhilinone, and the trimethoxysilyl quaternary ammonium chloride compounds. Comments received after the close of the comment period will be marked ''late.'' EPAis not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a response to comments memorandum in the docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the REDs in the **Federal Register**. In the absence of substantive comments requiring changes, the ATMD, bioban P-1487, copper 8-quinolinolate, napthenate salts, octhilinone, and the trimethoxysilyl quaternary ammonium chloride compounds REDs will be implemented as now presented.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 17, 2008.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E8–15008 Filed 7–1–08; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[DA 08–1417]

Notice of Debarment; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the ''Bureau'') debars Mr. Rafael G. Adame from the schools and libraries universal service support mechanism (or ''E-Rate Program'') for a period of three years based on his conviction of wire fraud in connection with his participation in the program. The Bureau takes this action to protect the E-Rate Program from waste, fraud and abuse.

DATES: Debarment commences on the date Mr. Rafael G. Adame receives the debarment letter or July 2, 2008, whichever date come first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418–0843 or e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Bureau debarred Mr. Rafael G. Adame from the schools and libraries universal service support mechanism for a period of three years pursuant to 47 CFR 54.8 and 47 CFR 0.111. Attached is the debarment letter, DA 08–1417, which was mailed to Mr. Rafael G. Adame and released on June 13, 2008. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov*. The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com*.

Federal Communications Commission.

Hillary DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

The debarment letter, which attached the suspension letter, follows:

June 13, 2008.

DA 08–1417

Via Certified Mail; Return Receipt Requested and Facsimile (956–664–2703).

Mr. Rafael G. Adame, c/o Eric Samuel Jarvis, Esq., Alvarez & Jarvis, PC, 6521 N. 10th Street, Suite A, McAllen, TX 78504, E-Mail: *eric@alvarezandjarvis.com*.

Re: Notice of Debarment, File No. EB–07–IH–9547

Dear Mr. Adame: Pursuant to section 54.8 of the rules of the Federal Communications Commission (the ''Commission''), by this Notice of Debarment you are debarred from the schools and libraries universal service support mechanism (or ''E-Rate program'') for a period of three years.[1]

On April 2, 2008, the Enforcement Bureau (the ''Bureau'') sent you a Notice of Suspension and Initiation of Debarment Proceedings (the ''Notice of Suspension'').[2] That Notice of Suspension was published in the **Federal Register** on May 2, 2008.[3] The Notice of Suspension suspended you from the schools and libraries universal service support mechanism and described the basis for initiation of debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.[4]

Pursuant to the Commission's rules, any opposition to your suspension or its scope or to your proposed debarment or its scope had to be filed with the Commission no later than thirty (30) calendar days from the earlier date of your receipt of the Notice of Suspension or publication of the Notice of Suspension in the **Federal Register**.[5] The Commission did not receive any such opposition.

As discussed in the Notice of Suspension, you pled guilty to and were convicted of wire fraud, in violation of 18 U.S.C. 1343, for your participation in the E-Rate program.[6] You admitted to submitting fraudulent invoices to the Universal Service Administrative Company for reimbursement from the E-rate program.[7] Such conduct constitutes the basis for your debarment, and your conviction falls within the categories of causes for debarment under section 54.8(c) of the Commission's rules.[8] For the foregoing reasons, you are hereby debarred for a period of three years from the debarment date, i.e., the earlier date of your receipt of this Notice of Debarment or its publication date in the **Federal Register**.[9] Debarment excludes you, for the debarment period, from activities ''associated with or related to the schools and libraries support mechanism,'' including ''the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.'' [10]

Sincerely,

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail);
Duncan S. Currie, Esq., Chief, Dallas Field Office, Antitrust Division, Department of Justice.

April 2, 2008.

DA 08–770

Via Certified Mail; Return Receipt Requested and Facsimile (956–664–2703).

Mr. Rafael G. Adame, c/o Eric Samuel Jarvis, Esq., Alvarez & Jarvis, PC, 6521 N. 10th Street, Suite A, McAllen, TX 78504, E-Mail: *eric@alvarezandjarvis.com.*

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–07–IH–9547

Dear Mr. Adame: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction for wire fraud in violation of 18 U.S.C. 1343 in connection with your participation in the schools and libraries universal service support mechanism (''E-Rate program'').[11] Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[12]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[13] On November 19, 2007, the United States District Court of Texas sentenced you to serve three years in prison following your conviction on seven counts of wire fraud in connection with your participation in the E-Rate program.[14] As the owner of ATE Tel, a vendor that provided computer-related goods and services to various school districts, including the Weslaco Independent School District in South Texas, you submitted fraudulent invoices via wire communications to the Universal Service Administrative Company (''USAC'') for reimbursement from the E-Rate program.[15] By making false representations on invoices filed with USAC, you fraudulently obtained more than $106,000 in illegitimate payments from the federal E-Rate program.[16]

Pursuant to section 54.8(a)(4) of the Commission's rules,[17] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[18] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[19]

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[20] Such requests, however, will not ordinarily be granted.[21] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[22]

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[1] *See* 47 CFR 0.111(a), 54.8.

[2] Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Rafael G. Adame, Notice of Suspension and Initiation of Debarment Proceedings, 23 FCC Rcd 5518 (Inv. & Hearings Div., Enf. Bur. 2008) (Attachment 1).

[3] FR 24287 (May 2, 2008).

[4] *See* Notice of Suspension, 23 FCC Rcd at 5519–21.

[5] *See* 47 CFR 54.8(e)(3) and (4). That date occurred no later than June 2, 2008. *See supra* note 3.

[6] *See* Notice of Suspension, 23 FCC Rcd at 5519.

[7] *See id.*

[8] *Id.* at 5519; 47 CFR 54.8(c).

[9] *See* Notice of Suspension, 23 FCC Rcd at 5520.

[10] *See* 47 CFR 54.8(a)(1), 54.8(a)(5), 54.8(d); Notice of Suspension, 23 FCC Rcd at 5520–21.

[11] Any further reference in this letter to ''your conviction'' refers to your conviction of seven counts of wire fraud. *United States* v. *Rafael Gongora Adame*, Criminal Docket No. 7:06–CR–1082, CRIMINAL NO. M–06–1082, Judgment (S.D. Tex. filed Mar. 3, 2008 and entered Mar. 11, 2008) (''*Adame Judgment*'').

[12] 47 CFR 54.8; 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (''*Second Report and Order*'') (adopting section 54.521 to suspend and debar parties from the E-rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *See Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, Report and Order, 22 FCC Rcd 16372, 16410–12 (''*Program Management Order*'') (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

[13] *See Second Report and Order*, 18 FCC Rcd at 9225, para. 66; *Program Management Order* 22 FCC Rcd at 16387, para. 32. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized.'' 47 CFR 54.8(a)(6).

[14] See generally Adame Judgment at 1.

[15] *United States* v. *Rafael Gongora Adame*, Criminal Docket No. 7:06–CR–1082, CRIMINAL NO. M–06–1082, Indictment, 3 (S.D. Tex. filed Dec. 6, 2006 and entered Dec. 12, 2006) (''*Adame Indictment*''). *See United States* v. *Rafael Gongora Adame*, Criminal Docket No. 7:06–CR–1082, CRIMINAL NO. M–06–1082, Verdict (S.D. Tex. filed Feb. 9, 2007 and entered Mar. 20, 2007) (''*Adame Verdict*''); *Adame Judgment*; Department of Justice Press Release: *Former Telecom Owner Sentenced to Three Years in Prison for Scheme to Defraud Federal E-Rate Program*, 1 (''*DOJ November 20 Press Release*'').

[16] See Adame Judgment; see also DOJ November 20 Press Release at 1.

[17] 47 CFR 54.8(a)(4). *See Second Report and Order*, 18 FCC Rcd at 9225–9227, paras. 67–74.

[18] 47 CFR 54.8(a)(1), (d).

[19] *Second Report and Order*, 18 FCC Rcd at 9226, para. 69; 47 CFR 54.8(e)(1).

[20] 47 CFR 54.8(e)(4).

[21] *Id.*

[22] 47 CFR 54.8(f).

Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[23]

II. Initiation of Debarment Proceedings

Your conviction in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.8(c) of the Commission's rules.[24] Therefore, pursuant to section 54.8(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[25] Absent extraordinary circumstances, the Bureau will debar you.[26] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[27] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[28]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[29] The Bureau may, if necessary to protect the public interest, extend the debarment period.[30]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of the response via e-mail to *diana.lee@fcc.gov* and to *vickie.robinson@fcc.gov*.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov*.

Sincerely yours,

Trent Harkrader,

Deputy Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail); Duncan S. Currie, Esq., Chief, Dallas Field Office, Antitrust Division, Department of Justice.

[FR Doc. E8–15033 Filed 7–1–08; 8:45 am]

BILLING CODE 6712–01–P

[23] *See Second Report and Order*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5), 54.8(f).

[24] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism.'' 47 CFR 54.8(c). Such activities ''include the receipt of funds or discounted services through [the federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the federal universal service] support mechanisms.'' 47 CFR 54.8(a)(1).

[25] *See Second Report and Order*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(3).

[26] *Second Report and Order*, 18 FCC Rcd at 9227, para. 74.

[27] *See id.*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5).

[28] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

[29] *Second Report and Order*, 18 FCC Rcd at 9225, para. 67; 47 CFR 54.8(d), 54.8(g).

[30] *Id.*

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements (202)–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 201188.

Title: Houston Terminal LLC Cooperative Working Agreement.

Parties: Ceres Gulf, Inc.; Container Marine Terminals LLC; Houston Terminal LLC; and Mediterranean Shipping Company, S.A.

Filing Party: Robert T. Basseches, Esq., Goodwin/Procter LLP; 901 New York Avenue; Washington, DC 20001.

Synopsis: The agreement would authorize the parties to operate Houston Terminal LLC and discuss and agree on matters relating to the operation of that company at the Port of Houston.

Agreement No.: 201189.

Title: New Orleans Terminal LLC Cooperative Working Agreement.

Parties: Ceres Gulf, Inc.; Container Marine Terminals LLC; New Orleans Terminal LLC; and Mediterranean Shipping Company, S.A.

Filing Party: Robert T. Basseches, Esq., Goodwin/Procter LLP; 901 New York Avenue; Washington, DC 20001.

Synopsis: The agreement would authorize the parties to operate New Orleans Terminal LLC and discuss and agree on matters relating to the operation of that company at the Port of New Orleans.

By Order of the Federal Maritime Commission.

Dated: June 27, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–15039 Filed 7–1–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Privacy Act of 1974; Proposed New Systems of Records

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed New Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Federal Maritime Commission is issuing notice of the establishment of new systems of records.

DATES: Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 10, Microsoft Word 2003, or earlier versions of these applications, no later than August 1, 2008. The new systems will be effective August 11, 2008, unless comments are received that would result in a contrary determination.

ADDRESSES: Address all comments concerning this notice to: Karen V. Gregory, Assistant Secretary, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573–0001, *Secretary@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Assistant Secretary, Federal Maritime Commission, 800 N.

Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5725, *Secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION: The Commission proposes to adopt the following additional Systems of Records (''SOR''). Interested parties may participate by filing with the Assistant Secretary, Federal Maritime Commission their views and comments pertaining to this Notice. All suggestions for changes in the text should be accompanied by draft language necessary to accomplish the desired changes and should be accompanied by supportive statements and arguments. Comments must be submitted in the prescribed time or the proposed SOR will become effective as scheduled.

Notice is hereby given, that pursuant to the Privacy Act of 1974, 5 U.S.C 552a, the Commission proposed to establish new Systems of Records reading as follows:

FMC–32

SYSTEM NAME:

Regulated Persons Index (''RPI'').

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Bureau of Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on persons, including passenger vessel operators, vessel operating common carriers, marine terminal operators, sole proprietorships, association or agreement of persons, financial institutions, third party filers, practitioners before the Commission, ocean freight forwarders, non-vessel-operating common carriers, members of partnerships, and officers and owners of corporate licensees, managers/members and owners of limited liability companies, ex-licensees, and applicants for licenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains names, addresses, phone/fax numbers of regulated entities and, where applicable, tax payer identification numbers (which may be Social Security Numbers), or names, addresses, and Social Security Numbers (or alternatively, driver's license numbers, passport, visa, or alien registration numbers) of the stockholders, officers, managers/members, and directors of individual ocean transportation intermediaries (OTIs); financial responsibility information including name of financial institutions, instrument identification numbers and amount of instruments; and, internal processing and licenses information pertinent to OTIs. Under the Shipping Act of 1984, as amended, OTIs may be an ocean freight forwarder, a non-vessel-operating common carrier, or both.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 553; secs. 3, 8, 10, 11, 13, 15, 17 and 19, Shipping Act of 1984 (recodified October 2006 as 46 U.S.C. 305, 40102, 40104, 40501–40503, 40901–40904, 41101–41109, 41302–41303, and 41305), 46 App. U.S.C. 1704 (recodified as 46 U.S.C. 40302–40303), 46 App. U.S.C. 1707 (recodified as 46 U.S.C. 40501–40503), 46 App. U.S.C. 817(d) and (e) (recodified 46 U.S.C. 44101–44106), 46 CFR 502.27, 46 CFR 520.3(d).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information contained in these records may be disclosed as follows:

1. By the Commission staff for monitoring the activities of regulated entities to ensure they are in compliance with Commission regulations.

2. By Commission staff for evaluation of applicants for licensing and certificates.

3. To provide or update information maintained in the U.S. Customs and Border Protection's (CBP) Automated Commercial Environment/International Trade Data System (ACE/ITDS) to verify licensed or registered status of OTIs under the Trade Act of 2002 and related CBP requirements (or any other successor agency or organization) and to verify that passenger vessels with 50 or more passenger berths embarking passengers from U.S. ports have valid certificates.

4. Selected data such as name, address, phone/fax number are available to the public at a fee.

5. To appropriate agencies, entities, and persons when (a) the Federal Maritime Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the agency or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and LAN environment at Commission headquarters.

RETRIEVABILITY:

Records are indexed by name, organization number, or license number.

SAFEGUARDS:

Records are maintained in an area of restricted accessibility.

RETENTION AND DISPOSAL:

Passenger vessel applicant and certificate files and OTI applicant and licensee files are kept as long as the application and/or certificate/license is active. Files for withdrawn and denied applicants, and revoked licensees as well as passenger vessel operators no longer active in the program remain in the Record Location Center ten years after final action. After ten years, the files are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Request may be in person or by mail and shall meet the requirements set out in section 503.65 of title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefore, and shall meet the requirements of section 503.66 of title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

1. Information submitted by applicants, licensees, certificants, practitioners, third party filers, vessel operating common carriers, marine terminal operators, financial entities including surety companies.
2. OTI license status information.
3. Information submitted by Commission Area Representatives.
4. Information obtained through Internet web site searches and selected commercial and government database searches conducted by BCL staff in processing OTI and PVO applications (e.g., ChoicePoint and Dun & Bradstreet).
5. Information submitted by the general public.
6. Information submitted by surety companies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory materials compiled for law enforcement purposes is exempted from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

FMC–33

SYSTEM NAME:

Payroll/Personnel System.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Hard copies of personnel records and payroll transactions and reports are located at the Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001. Electronic data are located at the U.S. Department of Agriculture, National Finance Center, New Orleans, LA 70129. The electronic records are subject to the Office of Personnel Management's government-wide system notice, OPM/GOVT–1.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Federal Maritime Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

All official personnel actions and/or payroll transaction information on Commission employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 2302(b)(20)(B), 2302(b)(10), 7311, 7313; Executive Order 10450; 5 CFR 731.103.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program state, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a ''routine use,'' to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed as a ''routine use'':

1. To a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of any employee, the issuance of a security clearance, the letting of a contract or the issuance of a license grant or other benefit.
2. To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.
3. To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator Service (FPLS) and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action.
4. To the Office of Child Support Enforcement for release to the Social Security Administration for verifying Social Security Numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.
5. To the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.
6. To an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.
7. To officers and employees of a Federal agency for purposes of audit.
8. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.
9. To officers and employees of the National Finance Center in connection with administrative services provided to this agency under agreement with NFC.
10. To GAO for audit; to the Internal Revenue Service for investigation; and to private attorneys, pursuant to a power of attorney.
11. To the Merit Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority, in connection with functions vested in those agencies.
12. To the Office of Management and Budget in connection with private relief legislation.
13. In litigation before a court or in an administrative proceeding being conducted by a Federal agency.
14. To the National Archives and Records Administration for records management inspections.
15. To Federal agencies as a data source for management information through the production of summary descriptive statistics and analytical studies in support of the functions for which the records are maintained for related studies.
16. To appropriate agencies, entities, and persons when (a) the Federal Maritime Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the agency or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in

connection with the agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

A copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, also is disclosed to the state, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the state, city or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, and 5520, or, in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both. Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished to the city in response to written request from an appropriate city official to the Secretary at the above address.

In the absence of a withholding agreement, the Social Security Number will be furnished only to a taxing jurisdiction which has furnished this agency with evidence of its independent authority to compel disclosure of the Social Security Number, in accordance with section 7 of the Privacy Act, Public Law 93–579.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in Official Personnel Folders and payroll files at the FMC. Electronic records reside at the National Finance Center.

RETRIEVABILITY:

Hard copy records are retrievable by name. Electronic data can be retrieved by Social Security Number.

SAFEGUARDS:

Electronic records are stored at the National Finance Center, which is located in a secured Federal complex with controlled access. Access to data is limited to those individuals to whom NFC has granted access/security. Output documents from the system are maintained as hard copy documents by the FMC's Office of Human Resources in secured cabinets located within a secured room.

RETENTION AND DISPOSAL:

Disposition of records shall be in accordance with General Records Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Human Resources, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in section 503.65 of title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of section 503.66 of title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

The subject individual; the Commission.

FMC–34

SYSTEM NAME:

Travel Charge Card Program—FMC.

SYSTEM LOCATION:

Office of Financial Management, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

This system is covered by the General Services Administration's government-wide system notice, GSA/GOVT–3.

FMC–35

SYSTEM NAME:

Transit Benefits File—FMC.

SYSTEM LOCATION:

Office of Management Services, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

This system is covered by the Department of Transportation's government-wide system notice, DOT/ALL–8.

FMC–36

SYSTEM NAME:

SmartPay Purchase Charge Card Program—FMC.

SYSTEM LOCATION:

Office of Management Services, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

This system is covered by the General Services Administration's government-wide system notice, GSA/GOVT–6.

By the Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–15037 Filed 7–1–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Privacy Act of 1974; Proposed Republication and Altered Systems of Records

June 27, 2008.

AGENCY: Federal Maritime Commission.

ACTION: Notice of republication and altered systems of records.

SUMMARY: This Notice proposes the amendment of various Privacy Act Systems of Records maintained by the Commission and republication of the agency's complete Systems of Records.

DATES: Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 10, Microsoft Word 2003, or earlier versions of these applications, no later than August 1, 2008. The alterations will be effective on August 11, 2008, unless comments are received that would result in a contrary determination.

ADDRESSES: Address all comments concerning this notice to: Karen V. Gregory, Assistant Secretary, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573–0001, *Secretary@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Assistant Secretary, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5725, *Secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION: Notice is given that, pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the Federal Maritime Commission proposes to amend various Systems of Records (''SOR'') and to republish the complete SOR.

The following systems are being deleted: FMC–15 Service Control Line-FMC—because the files are no longer maintained by the Office of Human Resources; FMC–21—Payroll Records—because a new system has been developed which indicates that the Payroll Records are no longer handled by the Office of Thrift Supervision; and FMC–30—Procurement Integrity Certification Files—because it relates to the Automated Tariff Filing and Information System which has been discontinued.

The Office of Management and Budget has advised that agencies should publish a routine use for appropriate systems of records specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach involving Personally Identifiable Information. Accordingly, the following routine use has been added to each of the Commission's SOR:

To appropriate agencies, entities, and persons when (a) The Federal Maritime Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the agency or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

In addition, minor changes are being made which reflect organizational name changes and changes to retention time periods. Non-substantive editorial changes are also being made to appropriate systems. These affected systems are: FMC–8—Official Personnel Folder; FMC–9—Training Program Records; FMC–14—Medical Examination File; FMC–16—Classification Appeals File; and FMC–29—Employee Performance File System Records. These systems all fall under the Office of Personnel Management's Government-wide SOR. Also, FMC–25—Inspector General File is being changed to reflect that investigative files that do not relate to a specific investigation, currently retained for ten years, will now be retained for seven years. Other investigative case files that were retained for fifteen years will now be retained for ten years.

Interested parties may participate by filing with the Assistant Secretary, Federal Maritime Commission, an original and 15 copies of their views and comments (paper), or e-mail comments as an attachment in WordPerfect 10, Microsoft Word 2003, or earlier versions of these applications. All suggestions for changes should be accompanied by draft language necessary to accomplish the desired changes, and should include supportive statements and arguments.

A complete Systems of Records reflecting the above listed changes follows.

Federal Maritime Commission

Systems of Records

FMC–1 Personnel Security File.
FMC–2 Non-Attorney Practitioner File.
FMC–7 Licensed Ocean Transportation Intermediaries Files (Form FMC–18).
FMC–8 Official Personnel Folder.
FMC–9 Training Program Records.
FMC–10 Desk Audit File.
FMC–14 Medical Examination File.
FMC–16 Classification Appeals File.
FMC–18 Travel Orders/Vouchers File.
FMC–19 Financial Disclosure Reports and Other Ethics Program Records.
FMC–22 Records Tracking System.
FMC–24 Informal Inquiries and Complaints Files.
FMC–25 Inspector General File.
FMC–26 Administrative Grievance File.
FMC–28 Equal Employment Opportunity Complaints File.
FMC–29 Employee Performance File System Records.
FMC–31 Debt Collection Files.

FMC–1

SYSTEM NAME:

Personnel Security File—FMC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Human Resources, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Employees of the Federal Maritime Commission. 2. Applicants for employment with the Federal Maritime Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of name checks, inquiries, and investigations to determine suitability for employment with the U.S. Government, and for access to classified information, position sensitivity designation, and record of security clearance issued, if any.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 10450, 12958, and 12968.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system of records are used or may be used:

1. By Commission officials to determine suitability for employment of an applicant or retention of a current employee and to make a determination that the employment of an applicant or retention of a current employee within the Commission is clearly consistent with the interests of national security.

2. To refer, where there is an indication of a violation or potential violation of law, whether civil or criminal or regulatory in nature, information to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

3. To request from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee or the issuance of a security clearance.

4. To provide or disclose information to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

5. By a court of law or appropriate administrative board or hearing having review or oversight authority.

6. To appropriate agencies, entities, and persons when (a) The Federal Maritime Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the agency or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Records are maintained in a combination safe in the custody of the Information Security Officer, and access is limited to the Information Security Officer and the Personnel Security Officer and his/her duly authorized representatives.

RETENTION AND DISPOSAL:

Maintain Office of Personnel Management reports of investigation and other FMC records on file until termination of employee from agency. Destroy within 30 days after employee leaves the agency.

SYSTEM MANAGER(S) AND ADDRESS:

Information Security Officer, Office of Human Resources, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in section 503.65 of title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of section 503.66 of title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Office of Personnel Management report, and reports from other Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information about individuals that meets the criteria of 5 U.S.C. 552a(k)(5), regarding suitability, eligibility or qualifications for Federal civilian employment or for access to classified information, to the extent that disclosure would reveal the identity of a source who furnished information to the Commission under a promise of confidentiality is exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). Exemption is required to honor promises of confidentiality.

FMC–2

SYSTEM NAME:

Non-Attorney Practitioner File—FMC.

SYSTEM CLASSIFICATION

Unclassified.

SYSTEM LOCATION:

Office of Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons, who are not attorneys, who apply for permission to practice before the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms containing descriptions of educational and professional experience and qualifications, taxpayer identification numbers (which may be the social security number), and letters of reference in relation to non-attorney practitioners.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 CFR 502.27.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system of records are used or may be used:

1. By personnel of the Secretary's Office to determine whether a non-attorney should be admitted to practice before the Commission.

2. To refer, where there is an indication of a violation or potential violation of law, whether civil or criminal or regulatory in nature, information to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

3. To request from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

4. To provide or disclose information to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

5. To appropriate agencies, entities, and persons when (a) The Federal Maritime Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the agency or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Physical records are maintained in file folders. Electronic records are maintained in a database on a computer hard drive.

RETRIEVABILITY:

Physical records are indexed alphabetically by name. Electronic records are retrievable by name, address, company, application date, admission date, or card number.

SAFEGUARDS:

Physical records are maintained in file cabinets under the control of personnel in the Secretary's office. Electronic records are password protected.

RETENTION AND DISPOSAL:

Records are maintained in the Office of the Secretary for 10 years after applicant ceases to practice and then are transferred to the Federal Records Center. Records are destroyed 20 years thereafter.

SYSTEM MANAGER(S) AND ADDRESS:

Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in section 503.65 of title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of section 503.66 of title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Applicants.

FMC–7

SYSTEM NAME:

Licensed Ocean Transportation Intermediaries Files (Form FMC–18).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Bureau of Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on individuals, including sole proprietorships, members of partnerships, and officers and owners of corporate licensees, managers and owners of limited liability companies, ex-licensees, and applicants for licenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

The System contains ocean transportation intermediaries (OTIs) names, addresses and taxpayer identification numbers (which may be the Social Security Numbers), as well as the names, addresses, and Social Security Numbers (or alternatively, driver's license numbers, passport numbers or alien registration numbers) of the stockholders, officers, and directors of individual OTIs; descriptions of the relationships the OTI may have with other business entities; corporate organizational documents and business licenses; a record of the OTI's past experience in providing or procuring ocean transportation services; surety bond information with respect to licensed OTIs; and any financial information and/or criminal convictions pertinent to the licensing of the OTIs. Under the Shipping Act of 1984, as amended, OTIs may be either an ocean freight forwarder, a non-vessel-operating common carrier or both.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 553; secs. 3, 8, 10, 11, 13, 15, 17 and 19, Shipping Act of 1984 (recodified October 2006 as 46 U.S.C. 305, 40102, 40104, 40501–40503, 40901–40904, 41101–41109, 41302–41303, and 41305).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information contained in these records may be disclosed as follows:

1. By Commission staff for evaluation of applicants for licensing.

2. By Commission staff for monitoring the activities of licensees to ensure they are in compliance with Commission regulations.

3. To refer, where there is an indication of a violation or potential violation of law whether civil, criminal or regulatory in nature, information to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rules, regulations, or orders issued pursuant thereto.

4. To request from a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information, data relevant to a Commission decision concerning the issuance of a license.

5. To provide or disclose information to a Federal agency in response to its request in connection with the hiring or retention of an employee previously employed by a licensee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

6. To provide or update information maintained in the U.S. Customs and Border Protection's (CBP) Automated Commercial Environment/International Trade Data System (ACE/ITDS) to verify licensed or registered status of OTIs under Trade Act of 2002 and related CBP requirements, or any other successor agency or organization.

7. To appropriate agencies, entities, and persons when (a) The Federal Maritime Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the agency or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and in a personal computer on-site at Commission headquarters.

RETRIEVABILITY:

Records are indexed by name and license or organization number.

SAFEGUARDS:

Records are maintained in an area of restricted accessibility.

RETENTION AND DISPOSAL:

Applicant and licensee files are kept as long as the application and/or license is active. Files for withdrawn and denied applicants, and revoked licenses remain in the Record Location Center ten years after final action. After ten years the files are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Request may be in person or by mail and shall meet the requirements set out in section 503.65 of title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of section 503.66 of title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

1. Information submitted by applicants and licensees.
2. Information submitted by Commission Area Representatives.
3. Information submitted by the general public (e.g., through complaints).
4. Information submitted by surety companies.
5. Information obtained through Internet Web site searches and selected commercial and government database searches conducted by Bureau of Certification and Licensing staff in processing OTI license applications (e.g., Choicepoint and Dun & Bradstreet).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory materials compiled for law enforcement purposes is exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

FMC–8

SYSTEM NAME:

Official Personnel Folder—FMC.

SYSTEM LOCATION:

Office of Human Resources, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

This system is covered by the Office of Personnel Management's government-wide system notice, OPM/GOVT–1.

FMC–9

SYSTEM NAME:

Training Program Records—FMC.

SYSTEM LOCATION:

Office of Human Resources, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573–0001.

This system is covered by the Office of Personnel Management's government-wide system notice, OPM/GOVT–1.

FMC–10

SYSTEM NAME:

Desk Audit File—FMC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Human Resources, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Federal Maritime Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Each record consists of the position classification specialist's notes of conversations, evaluation reports, background papers, and/or research material used to support the final position classification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 *et seq.*, 5 U.S.C. 1302 and the regulations issued pursuant thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system of records is used or may be used:

1. By Commission officials to support decisions on the proper classification of a position.

2. To refer, where there is an indication of a violation or potential violation of law, whether civil or criminal or regulatory in nature, information to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

3. To request from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

4. To provide or disclose information to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

5. By the Office of Personnel Management in the course of an investigation, or evaluating for statistical or management analysis purposes.

6. To appropriate agencies, entities, and persons when (a) The Federal Maritime Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the agency or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Records are maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Records are maintained as long as the position audited remains essential, current, and accurate, after which they are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Human Resources, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in section 503.65 of title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of section 503.66 of title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Human Resources Specialists of the Commission.

FMC–14

SYSTEM NAME:

Medical Examination File—FMC.

SYSTEM LOCATION:

Office of Human Resources, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

This system is covered by the Office of Personnel Management's government-wide system notice, OPM/GOVT–10.

FMC–16

SYSTEM NAME:

Classification Appeals File-FMC.

SYSTEM LOCATION:

Office of Human Resources, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

Note: This system is covered by the Office of Personnel Management's government-wide system notice, OPM/GOVT–9.

FMC–18

SYSTEM NAME:

Travel Orders/Vouchers File—FMC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Financial Management, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Federal Maritime Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record consists of the initial travel order for the individual and the subsequent travel voucher prepared from information supplied by the individual which includes hotel bills, subsistence breakdown, cab fares and air fares.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Travel Regulation, 41 CFR parts 301–304.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system of records are used or may be used:

1. By the Commission for the authorization of travel performed by personnel of the Commission.

2. By the Commission to prepare travel vouchers for submission to the Bureau of Public Debt through E-Gov and to maintain internal control of travel expenses within this agency.

3. To refer, where there is an indication of a violation or potential violation of law, whether civil or criminal in nature, information to the appropriate agency, whether Federal, State or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

4. To appropriate agencies, entities, and persons when (a) The Federal Maritime Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the agency or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name or bureau.

SAFEGUARDS:

Records are maintained in a locking file cabinet and monitored by the Director of the Office of Financial Management.

RETENTION AND DISPOSAL:

The records are maintained for six years and are then destroyed by shredding (in accordance with General Records Schedule 9).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Financial Management, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in section 503.65 of title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of section 503.66 of title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, hotel bills, individual's subsistence record, and Travel Requests (airline or train).

FMC–19

SYSTEM NAME:

Financial Disclosure Reports and Other Ethics Program Records.

SYSTEM LOCATION:

Office of the General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

Note: This system is covered by the Office of Government Ethics' government-wide systems notices, OGE/GOVT–1 and OGE/GOVT–2.

FMC–22

SYSTEM NAME:

Records Tracking System.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Bureau of Enforcement, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals whose names may be found in the system include employees,

officers, directors, and owners of ocean common carriers, non-vessel operating common carriers, ocean freight forwarders, passenger vessel operators, ports and terminal operators, shippers, consignees, conferences and agreements between ocean common carriers, and other entities associated with any of the foregoing. Included are individuals alleged to have violated one of the statutes or regulations administered by the Federal Maritime Commission, individuals who provided information during an investigation, and others necessary to the full development of an investigation. Not included are attorneys, government officials, Federal Maritime Commission employees, or individuals only incidentally involved in an investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Records Tracking System includes records on individuals involved in official investigations conducted by the Bureau of Enforcement, fact finding and formal proceedings instituted by the Federal Maritime Commission, court proceedings, and civil and criminal investigations conducted in association with other government agencies. Investigations include investigations of alleged violations of the statutes or regulations administered by the Commission, freight forwarder application inquiries, freight forwarder application checks, freight forwarder compliance checks, service contract audits, common carrier audits, passenger vessel audits, special inquiries, undeveloped leads, intelligence activities, and other matters authorized by the Bureau of Enforcement.

The Records Tracking System includes all files and records of the Bureau, wherever located. The system also includes reports or other information from other government agencies, shipping and commercial records, investigative work product, notes of interviews, documents obtained from any source, schedules of data, investigative plans and directives, disclosures, settlement agreements, and any other records prepared in conjunction with a case including information which tends to explain, interpret, or substantiate any of the above. The system also includes indices of these records, tracking systems, and listings of information otherwise included within the system.

The Records Tracking System contains information in electronic and paper media. Information within the system may be stored in files or data bases by specific subject or in general groupings. The information remains within the system through analysis, research, corroboration, field investigation, reporting, and referral within the Commission or to another government agency. Information remains within the system whether a case is open or closed or the matter becomes inactive. Information also remains within the system when records are retired to storage or are otherwise purged.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Shipping Act of 1984, Intercoastal Shipping Act, 1933, and Shipping Act, 1916 (46 U.S.C. app. 1701, 843, and 801).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. In the event that a system of records maintained by the FMC to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed, as a routine use, to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an FMC decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a Federal, State, local or international agency, in response to its request, in connection with the assignment, hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

5. A record in this system of records may be disclosed as a routine use to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of such joint committee.

6. A record in this system of records may be disclosed, as a routine use, to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

7. A record in this system may be transferred, as a routine use, to the Office of Personnel Management for personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.

8. To appropriate agencies, entities, and persons when (a) The Federal Maritime Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the agency or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper form in filing cabinets and in a Lektriever, Series 80. Statistical data taken from record forms are maintained in a personal computer.

RETRIEVABILITY:

Information filed by case of subject file. Records pertaining to individuals are accessed by reference to the Bureau of Enforcement's name-relationship index system.

SAFEGUARDS:

Records are located in locked metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. The Lektriever files are locked with a key and the key is secured in a locked file cabinet. Computer information is safeguarded with an access code. Files are maintained in buildings that have 24 hour security guards.

RETENTION AND DISPOSAL:

Records are retained for 7 years after the end of the calendar year in which the case file actions are concluded; the records are destroyed 25 years after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Enforcement, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in section 503.65 of title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of section 503.66 of title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Individual shippers, carriers, freight forwarders, those authorized by the individual to furnish information, trade sources, investigative agencies, investigative personnel of the Bureau of Enforcement and other sources of information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory materials compiled for law enforcement purposes is exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

FMC–24

SYSTEM NAME:

Informal Inquiries and Complaints Files—FMC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Informal Inquiries and Complaints, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consumers complaining against business entities regulated by the Commission

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of complaints and correspondence developed in their resolution complaint tracking logs; and complaint tracking electronic summary database.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12160, September 26, 1979.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system of records is used or may be used:

1. To determine whether a complaint can be resolved by staff in various bureaus and offices.

2. To determine whether a complaint can be resolved by a business entity regulated by the Commission.

3. To determine whether the complaint can be resolved by reference to another agency at the Federal, State or local level.

4. To provide information to the Commission on developments or trends in the character of complaints which might suggest policy directions, proposed rules or programs.

5. To appropriate agencies, entities, and persons when (a) The Federal Maritime Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the agency or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Physical records are maintained in file folders; the electronic database is maintained on the Commission's local area network.

RETRIEVABILITY:

Physical and electronic records are serially numbered and indexed by complainant and respondents.

SAFEGUARDS:

Physical records are maintained in locked file cabinets; access to electronic records is password protected.

RETENTION AND DISPOSAL:

Records are maintained by the Federal Maritime Commission for four years and then destroyed. The electronic summary database is permanently maintained.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Informal Inquiries and Complaints, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in section 503.65 of title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of section 503.66 of title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Consumers who have filed complaints.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory materials compiled for law enforcement purposes is exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

FMC–25

SYSTEM NAME:

Inspector General File.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Inspector General, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities who are or have been the subjects of investigations conducted by the OIG, including present and former FMC employees; consultants, contractors, and subcontractors and their employees; and other individuals and entities doing business with the FMC.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. *Investigative Case Files*

1. *Case Index*

Selected information from each case file indexed by case file number, and case title which may include names of subjects of investigations.

2. *Hard Copy Files*

Case files developed during investigations of known or alleged fraud and abuse and irregularities and violations of laws and regulations. Cases relate to agency personnel and programs and operations administered by the agency, including contractors and others having a relationship with the agency. Files consist of investigative reports and related documents, such as correspondence, internal staff memoranda, copies of all subpoenas issued during the investigation, affidavits, statements from witnesses, transcripts of testimony taken in the investigation and accompanying exhibits, notes, attachments, and working papers. Files containing information or allegations which are of an investigative nature but do not relate to a specific investigation.

B. *Hotline Complaints*

1. *Hotline Index*

Selected information from each hotline complaint file indexed by hotline case number and title which may include names of subject of hotline complaint.

2. *Hard Copy Files*

Information obtained from hotline complainants reporting indications of waste, fraud, and mismanagement. Specific information to include name and address of complainant, date complaint received, program area, nature and subject of complaint, and any additional contacts and specific information provided by the complainant. Information on OIG disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978 (5 U.S.C. App. 3), as amended by Pub. L. 100–504; 44 U.S.C. 3101 *et seq.*; Commission Order No. 113.

PURPOSE(S):

The records maintained in the system are used by the OIG in furtherance of the responsibilities of the Inspector General, pursuant to the Inspector General Act of 1978, as amended, to conduct and supervise audits and investigations relating to programs and operations of the FMC; to promote economy, efficiency, and effectiveness in the administration of such programs and operations; and to prevent and detect fraud and abuse in such programs and operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in the system may be used and disseminated to further the purposes described above. The following routine uses apply to the records maintained in this system:

1. A record may be disclosed to an individual, or to a Federal, State, local, or international agency when necessary to further the ends of a legitimate investigation or audit.

2. A record which indicates either by itself or in combination with other information within the agency's possession, a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto, or which indicates a violation or potential violation of a contract, may be disclosed to the appropriate agency, whether Federal, State, local or international, charged with the responsibility of investigating or prosecuting such violation, or of enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, or of enforcing the contract.

3. A record may be disclosed to a Federal, State, local or international agency, in response to its request, in connection with the assignment, hiring, or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record may be disclosed to a Member of Congress who submits an inquiry on behalf of an individual, when the Member of Congress informs the FMC that the individual to whom the record pertains has authorized the Member of Congress to have access to the record. In such cases, the Member of Congress has no more right to the record than does the individual.

5. A record may be disclosed to the Office of Government Ethics for any purpose consistent with that Office's mission, including the compilation of statistical data.

6. A record may be disclosed to the U.S. Department of Justice in order to obtain that Department's advice regarding an agency's disclosure obligation under the Freedom of Information Act.

7. A record may be disclosed to the Office of Management and Budget in order to obtain that Office's advice regarding an agency's obligations under the Privacy Act.

8. A record may be disclosed to a grand jury agent pursuant either to a federal or state grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

9. A record may be disclosed to a ''consumer reporting agency'' as that term is defined in the Fair Credit Reporting Act and the Federal Claims Collection Act of 1966 in accordance with section 3711(f) of 31 U.S.C. and for the purposes of obtaining information in the course of an investigation or audit.

10. To appropriate agencies, entities, and persons when (a) The Federal Maritime Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the

agency or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The investigative case index and the hotline case index are stored on a hard disk on a personal computer. The hard copy files are stored in file folders. All records are stored under secured conditions.

RETRIEVABILITY:

Records in the investigative and hotline case index are retrieved by case title which may include the name of the subject of an investigation and by case number. Records in the hard copy files are retrieved by case numbers.

SAFEGUARDS:

Direct access is limited to authorized staff of the OIG. Additional access within FMC is limited to authorized officials on a need-to-know basis. All records, when not in a possession of an authorized individual are stored in locked cabinets or a locked, standalone, personal computer in a locked room.

RETENTION AND DISPOSAL:

1. Files containing information or allegations which are of an investigative nature but do not relate to a specific investigation are retained for seven years.

2. Other investigative case files are retained for ten years.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of The Inspector General, Federal Maritime Commission, Room 1072, 800 North Capitol Street, NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001. However, see Exemption section below.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in section 503.65 of title 46 of the Code of Federal Regulations. However, see Exemption section below.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of section 503.66 of title 46 of the Code of Federal Regulations. However, see Exemption section below.

RECORD SOURCE CATEGORIES:

Agency employees, reports and contracts from other agencies, and internal and external documents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory materials compiled for law enforcement purposes is exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

All information about individuals that meets the criteria of 5 U.S.C. 552a(k)(5), regarding suitability, eligibility or qualifications for Federal civilian employment or for access to classified information, to the extent that disclosure would reveal the identity of a source who furnished information to the Commission under a promise of confidentiality is exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). Exemption is required to honor promises of confidentiality.

All information meeting the criteria of 5 U.S.C. 552a(j)(2) pertaining to the enforcement of criminal laws is exempt from the provisions of 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

FMC–26

SYSTEM NAME:

Administrative Grievance File—FMC.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Human Resources, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any employee of the Federal Maritime Commission, including any former employee for whom a remedy can be provided.

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative Grievance Files contain all documents related to a particular grievance, including but not limited to any statements of witnesses, records or copies thereof, the report of the hearing when one is held, statements made by the parties to the grievance, and the decision.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, 7301, E.O. 9830, 3 CFR 1943–1948 Comp., pp. 606–624; E.O. 11222, 3 CFR 2964–2969 Comp., p. 306.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system of records is used or may be used:

1. By Commission officials designated as grievance examiners for the purpose of adjudication, by the Director of EEO in the event of an investigation when the EEO complaint relates to the grievance, or for information concerning the outcome of the grievance.

2. By the Office of Personnel Management in the course of an investigation of a particular employee of the Commission, for statistical analysis purposes, or for program compliance checks.

3. By the Merit Systems Protection Board if necessitated by an appeal.

4. By the appropriate District Court of the United States to render a decision when the Commission has refused to release a current or former employee's record under the Freedom of Information Act.

5. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, information to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rules, regulation or order issued pursuant thereto.

6. To request from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee.

7. To provide or disclose information to a Federal agency in response to its

request in connection with the hiring or retention of an employee, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

8. By the employee or his/her designated representative in order to gather or provide information necessary to process the grievance.

9. To appropriate agencies, entities, and persons when (a) The Federal Maritime Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the agency or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Records are stored in locked file cabinets.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule 1, the Administrative Grievance File is destroyed 4 years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Human Resources, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in section 503.65 of title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of section 503.66 of title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual to whom the record pertains and/or by his or her representative, human resource specialists, grievance examiners, and any parties providing information bearing directly on the grievance.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory materials compiled for law enforcement purposes is exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

All information about individuals that meets the criteria of 5 U.S.C. 552a(k)(5), regarding suitability, eligibility or qualifications for Federal civilian employment or for access to classified information, to the extent that disclosure would reveal the identity of a source who furnished information to the Commission under a promise of confidentiality is exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). Exemption is required to honor promises of confidentiality.

FMC–28

SYSTEM NAME:

Equal Employment Opportunity Complaint Files—FMC.

SYSTEM LOCATION:

Office of General Counsel, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573–0001.

Note: This system of records is covered by the Equal Employment Opportunity Commission's Government-wide system notice, EEOC/GOVT–1.

FMC–29

SYSTEM NAME:

Employee Performance File System Records—FMC.

SYSTEM LOCATION:

Office of Human Resources, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

This system of records is covered by the Office of Personnel Management's Government-wide system notice, OPM/GOVT–2.

FMC–31

SYSTEM NAME:

Debt Collection Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are located in the Office of Financial Management, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are indebted to FMC.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Debt Collection Officer's file will contain copies of debt collection letters, bills for collection, and correspondence to and from the debtor relating to the debt. The file will include such information as the name and address of the debtor, taxpayer's identification number (which may be the Social Security Number); amount of debt or delinquent amount; basis of debt; date debt arose; office/bureau referring debt to the Debt Collection Officer; record of each collection made; credit report; financial statement reflecting the net worth of the debtor; date by which debt must be referred to the Department of the Treasury for further collection action; and citation or basis on which debt was terminated or compromised.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3701 et seq., Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749) as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 101 Stat. 1321–358).

PURPOSE(S):

Information is used for the purpose of collecting monies owed FMC arising out of any administrative or program activities or services administered by FMC. The Debt Collection Officer's file represents the basis for the debt and amount of debt and actions taken by

FMC to collect the monies owed under the debt. The credit report or financial statement provides an understanding of the individual's financial condition with respect to requests for deferment of payment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. When debts are uncollectible, copies of the FMC Debt Collection Officer's file regarding the debt and actions taken to attempt to collect the monies are forwarded to the Department of Treasury for further collection action. FMC may also provide Treasury with copies of the debt collection letter, bill for collection, and FMC correspondence to the debtor.

2. Disclosure pursuant to 5 U.S.C. 552a(b)(12).

3. Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

4. To appropriate agencies, entities, and persons when (a) The Federal Maritime Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the agency or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in notebooks, file folders, on lists and forms, and in computer processible storage media.

RETRIEVABILITY:

The system files are filed by bill for collection number, name, or taxpayer's identification number (which may be the Social Security Number).

SAFEGUARDS:

Personnel screening, hardware, and software computer security measures; paper records are maintained in locked containers and/or room. All records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule 6, the records are maintained for 6 years and 3 months and then shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Financial Management, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager identified above. Written requests should be clearly marked ''Privacy Act Request'' on the envelope and letter. Requests should include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, the individuals should be able to provide some acceptable identification—that is, driver's license, employing organization identification card, or other picture identification card.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought.

FMC Privacy Act Regulations are promulgated in 46 CFR part 503.

RECORD SOURCE CATEGORIES:

Directly from the debtor, the initial application, credit report from the commercial credit bureau, administrative or program offices within FMC.

By the Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–15041 Filed 7–1–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 16, 2008.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Brian Wallman, Denver, Colorado, to retain control of Wallco, Inc., and thereby indirectly retain control of Nehawka Bank, both in Nehawka, Nebraska.

Board of Governors of the Federal Reserve System, June 26, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–14916 Filed 7–1–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 16, 2008.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Lawrence C. Holtz, Edina, Minnesota; to retain shares of Financial Services of Saint Croix Falls, Inc., Saint Croix Falls, Wisconsin, and thereby indirectly retain control of Eagle Valley Bank, National Association, St. Croix Falls, Wisconsin.

Board of Governors of the Federal Reserve System, June 27, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–14968 Filed 7–1–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 2008.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Unified Shares, LLC (LLC), Harrogate, Tennessee, to retain 27 percent of the voting shares of Commercial Bancgroup, Inc., and thereby indirectly retain voting shares of Commercial Bank, both of Harrogate, Tennessee.

In addition, Applicant, along with its lower tier holding company Commercial Bancgroup, Inc., Harrogate, Tennessee, also has applied to acquire 100 percent of the voting shares of Union National Bancorp of Barbourville, Inc., and thereby indirectly acquire voting shares of Union National Bank of Barbourville, both of Barbourville, Kentucky.

Board of Governors of the Federal Reserve System, June 26, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–14915 Filed 7–1–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 16, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Guthrie County Bancshares, Inc., through its subsidiary, Guthrie County Abstract Company, to acquire 100 percent of the voting shares of Guthrie County Abstract Co., and Beverly Wild Abstracting, Inc., all of Guthrie Center, Iowa, and engage in real estate title abstracting, pursuant to First National Company, *81 Federal Reserve Bulletin 805 (1995)*.

Board of Governors of the Federal Reserve System, June 26, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–14914 Filed 7–1–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Submission for OMB Review; Comment Request; Partner and Customer Satisfaction Surveys

SUMMARY: Under the provisions of Section 3507(a)(l)(D) of the Paperwork Reduction Act of 1995 for the opportunity for public comment on the proposed data collection projects, the Center for Scientific Review (CSR), National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. The purpose of this notice is to allow 30 days for public comment. The National Institutes of Health may not conduct or sponsor and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION:

Title: Reinstatement of Generic Clearance for Voluntary Partner and Customer Satisfaction Surveys.

Type of Information Collection Request: Reinstatement.

Need and Use of Information Collection: The information collected in these surveys will be used by the Center for Scientific Review management and personnel: (1) To assess the quality of the modified operations and processes now used by CSR to review grant applications; (2) To assess the quality of service provided by CSR to our customers; (3) To enable identification of the most promising biomedical research that will have the greatest impact on improving public health by

using a peer review process that is fair, unbiased from outside influence, timely, and (4) To develop new modes of operation based on customer need and customer feedback about the efficacy of implemented modifications. These surveys will almost certainly lead to quality improvement activities to enhance and/or streamline CSR's operations. The major mechanism by which CSR will request input is through surveys. The major initiatives ongoing at the present time include: shortening the review and application process, shortening the grant application, recruiting the best reviewers by developing additional review modes, improving study section alignment to ensure the best reviews, and others. Surveys will be collected via Internet. Information gathered from these surveys will be presented to, and used directly by, CSR management to enhance the operations, processes, organization of, and services provided by the Center.

Frequency of Response: The participants will respond once, unless there is a compelling reason for a subsequent survey.

Affected public: Universities, not-for-profit institutions, business or other for-profit, small businesses and organizations, and individuals.

Type of Respondents: Adult scientific professionals.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Instrument/Activity	Annual number of respondents	Number of responses per respondent	Annual average burden per response	Total burden hours per annual collection
Focus Groups	75	1	2.5 hours	187.5 hours
Mail/telephone/e-mail Surveys	5,000	1	0.25 hours	1,250 hours
Annual Total	5,075	.....	.....	1,437.5 hours per year

Requests for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the CSR, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond while maintaining their anonymity, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov*, or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Andrea Kopstein, Director of Planning, Analysis, and Evaluation, Center for Scientific Review, NIH, Room 3030, 6701 Rockledge Drive, Bethesda, MD 20892–7776, or call non-toll-free number 301–435–1133 or E-mail your request, including your address to: *kopsteina@csr.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: June 23, 2008.

Andrea Kopstein,

Director of Planning, Analysis, and Evaluation, CSR, National Institutes of Health.

[FR Doc. E8–14920 Filed 7–1–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Meeting

ACTION: Meeting announcement.

SUMMARY: This notice announces the meeting date for the 23rd meeting of the American Health Information Community in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.) The American Health Information Community will advise the Secretary and recommend specific actions to achieve a common interoperability framework for health information technology (IT).

Meeting Date: July 29, 2008, from 8:30 a.m. to 2 p.m. (Eastern).

ADDRESSES: Hubert H. Humphrey building (200 Independence Avenue, SW., Washington, DC 20201), Conference Room 800.

SUPPLEMENTARY INFORMATION: The meeting will include an update on the AHIC Successor organization; a discussion on the health information technology Strategic Plan; and an update on clinical research and health IT.

FOR FURTHER INFORMATION CONTACT: Visit *http://www.hhs.gov/healthit/ahic.html*.

A Web cast of the Community meeting will be available on the NIH Web site at: *http://www.videocast.nih.gov/*. If you have special needs for the meeting, please contact (202) 690–7151.

Dated: June 24, 2008.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E8–15007 Filed 7–1–08; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0355]

Submission of Quality Information for Biotechnology Products in the Office of Biotechnology Products; Notice of Pilot Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is seeking volunteers from pharmaceutical companies to participate in a pilot

program involving the submission of quality (chemistry, manufacturing, and controls) information for biotechnology products in an Expanded Change Protocol, consistent with the principles of quality by design and risk management in pharmaceutical manufacturing. The purpose of the pilot program is to gain more information on and facilitate agency review of quality-by-design, risk-based approaches for manufacturing biotechnology products. This pilot will focus on products reviewed by FDA's Office of Biotechnology Products (OBP), in the Office of Pharmaceutical Science (OPS), Center for Drug Evaluation and Research (CDER). This pilot program will assist FDA in developing guidance for industry on quality by design and risk management in pharmaceutical manufacturing. The pilot is open to original submissions of and supplements to biologic license applications (BLA) or new drug applications (NDA) reviewed by OBP.

DATES: Submit written and electronic requests to participate in the pilot program by September 30, 2009. Comments on this pilot program can be submitted until December 31, 2008.

ADDRESSES: Submit written requests to participate in and to comment on the pilot program to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic requests to participate in the pilot to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Marilyn Welschenbach, Center for Drug Evaluation and Research, Food and Drug Administration,Bldg. 21, rm. 1514, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002,301–796–1773, e-mail: *Marilyn.Welschenbach@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

OPS, in FDA's CDER, is establishing a quality-by-design, risk-based approach to pharmaceutical quality, which is based on FDA's final report on ''Pharmaceutical cGMPs for the 21st Century—A Risk-Based Approach'' (*http://www.fda.gov/cder/gmp/gmp2004/GMP_finalreport2004.htm*). The new quality-by-design approach will focus on critical quality attributes related to chemistry, formulation, and process design. Under quality by design, manufacturing will depend on a risk-based approach linking attributes and processes to product performance, safety, and efficacy.

The principles underlying this new approach to a quality-by-design, risk-based assessment can be found in the International Conference on Harmonisation (ICH) guidances: ''Q8 Pharmaceutical Development,'' May 2006 (*http://www.fda.gov/cder/guidance/6746fnl.pdf*), and ''Q9 Quality Risk Management (ICH),'' June 2006 (*http://www.fda.gov/cder/guidance/7153fnl.pdf*), and FDA's guidances for industry entitled ''PAT— A Framework for Innovative Pharmaceutical Development, Manufacturing, and Quality Assurance,'' September 2004 (*http://www.fda.gov/cder/guidance/6419fnl.pdf*), and ''Quality Systems Approach to Pharmaceutical CGMP Regulations,'' September 2006 (*http://www.fda.gov/cder/guidance/7260fnl.pdf*). Quality-by-design and risk-based approaches are also described in the following draft guidances: ''Q8(R1) Pharmaceutical Development Revision 1'' (*http://www.fda.gov/cder/guidance/8084dft.pdf*) and ''Q10 Pharmaceutical Quality Systems'' (*http://www.fda.gov/cder/guidance/7891dft.pdf*).

The agency's Office of New Drug Quality Assessment (ONDQA) in OPS, CDER, initiated a pilot program (70 FR 40719, July 14, 2005) to gain experience in assessing chemistry, manufacturing, and controls (CMC) sections of NDAs that demonstrate an applicant's product knowledge and process understanding at the time of submission. This pilot was extremely useful in helping identify appropriate information to be shared regarding quality by design for small molecules. Although many of the principles of quality by design apply equally to small molecules and more complex pharmaceuticals, the ability to assess relevant attributes is a much greater challenge for complex pharmaceuticals.

The OBP pilot described in this document focuses on defining clinically relevant attributes for complex products and linking them to the manufacturing process. In addition to considering quality by design for an entire original application, this pilot also will consider quality-by-design approaches to unit operations in supplements. Finally, this pilot will explore the use of protocols submitted under §§ 314.70(e) and 601.12(e) (21 CFR 314.70(e) and 601.12(e)).

Sections 314.70 and 601.12(e) allow for the use of protocols describing the specific tests and studies and acceptance criteria to be achieved to demonstrate the lack of adverse effect for specified types of manufacturing changes on the identity, strength, quality, purity, and potency of the drug product. A particular type of protocol is a Comparability Protocol. In many cases, Comparability Protocols have been used for a single manufacturing change. Protocols based on quality-by-design submissions will focus on critical quality attributes related to chemistry, formulation, and process design. Such protocols will be referred to as Expanded Change Protocols. Expanded Change Protocols will describe the quality-by-design, risk-based approach linking attributes and processes to product performance, safety, and efficacy.

II. Description of Pilot Program

This pilot will focus on quality-by-design approaches to the manufacturing of biotechnology products through the use of Expanded Change Protocols. The pilot program will provide additional information to FDA for use in facilitating quality-by-design, risk-based approaches for complex molecules. OBP will work with each participant on an individual basis. Pilot submissions will be either original applications or manufacturing supplements subject to the Prescription Drug User Fee Act (PDUFA) Performance Goals; we expect that participation in the pilot program will not adversely affect our ability to meet the review goal. The process will include appropriate coordination between agency quality review staff and staff from other disciplines (such as compliance, clinical pharmacology, toxicology, clinical review, as needed) based on the scope of the submission. Based on experience gained during the pilot program and prior knowledge, FDA will develop procedures to facilitate implementing a quality-by-design, risk-based approach for complex products. In addition, the experience gained by FDA under this pilot is expected to facilitate the development of guidance for industry.

A. Scope

The pilot program will include both original applications and postapproval supplements. A pilot program submission should demonstrate the applicant's increased knowledge of product attributes and link the product attributes to process parameters in an Expanded Change Protocol. Acceptance into this pilot program will depend on the soundness of the applicant's proposal as described in their written request to participate in the pilot and the potential of the proposed application to affect the development of a quality-by-design, risk-based approach for complex products. Considerations for acceptance into the pilot may include sponsor approaches to risk management and use of prior knowledge. Considerations for original

applications may also include quality-by-design approaches to multiple unit operations and the stage of product development. For original applications, it would be of value to enter the pilot well in advance of submitting the application. Entry during the appropriate stage of development, as an investigational new drug (IND), would facilitate working with the agency on quality-by-design approaches.

Because the number of biotechnology product applications submitted is relatively low compared to small-molecule drugs, the pilot will have an extended submission period. Written requests to participate in this pilot program for products regulated by OBP may be submitted from the date of the publication of this notice until September 30, 2009. This pilot program will be limited to 10 supplements to be submitted by March 31, 2010, and 5 original applications for products reviewed by OBP (BLA or NDA) in Common Technical Document (CTD) format, paper or electronic. As noted in the previous paragraph, it is preferable for original applications to enter the pilot as INDs. The INDs must be submitted before March 31, 2010. Due to resource considerations, participation in the program may be limited to a total of three pilot submissions to OBP per quarter.

Every effort will be made to ensure that a variety of pharmaceutical companies and complex biotechnology product types are included in this pilot program. This pilot affects the CMC section of the submission; however, supportive data may relate to other disciplines. Existing regulations and requirements for the submission of a supplement or marketing application (BLA or NDA) will not be waived, suspended, or modified for purposes of this pilot program. Participants must submit the application supplement or original application, paper or electronic, in accordance with 21 CFR parts 314 and 601 and other relevant regulations.

B. Process and How to Request Participation in the Pilot

Interested parties should submit to the Division of Dockets Management (see **ADDRESSES**) a written request to participate in the pilot program (identified with the docket number found in brackets in the heading of this document). The request should include the following information: (1) The contact person's name, company name, company address, and telephone number; (2) the name of the drug product and a brief description of the drug substance, dosage form, indication, and stage of development; (3) a summary of the approaches that define relevant attributes and process parameters; (4) a statement describing the manufacturing changes to be included in an Expanded Change Protocol; and (5) a timeline for requested premeetings and for the submission. All pharmaceutical companies requesting participation in the pilot program will be notified of their acceptance in writing by OBP within 60 days of receipt of the request.

Potential participants are encouraged to discuss their plans to participate in this pilot program with OBP. Discussions with potential applicants can facilitate appropriate pilot applications. Meeting requests for potential applicants should be submitted in accordance with FDA's guidance for industry on ''Formal Meetings With Sponsors and Applicants for PDUFA Products,'' February 2000 (*http://www.fda.gov/cder/guidance/2125fnl.htm*). Once an application is selected for participation in this program, the applicant can meet with OBP as needed before the submission and during the review process by sending requests directly to OBP.

The quality assessment under this pilot program will be conducted under the direct oversight of the OBP Office Director by a team of experienced OBP scientists who have a strong scientific background in product quality, biochemistry, biology and structure/function relationships. OBP will be assisted by the Office of Compliance on proposed current good manufacturing practices (CGMP) and facility approaches and other disciplines, as appropriate. ONDQA and FDA's Center for Biologics Evaluation and Research will also coordinate with OBP to facilitate a consistent general approach to quality-by-design principles.

After the application or amendment has been submitted into the pilot program, the submission may be withdrawn or amended within an agreed upon timeframe to not delay approval.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic submissions will be accepted by FDA through FDMS only.

Dated: June 24, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–14999 Filed 7–1–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1986–F–0277] (formerly Docket No. 1986F–0364)

Danisco USA, Inc.; Withdrawal of Food Additive Petition; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 6A3958) that appeared in the **Federal Register** of June 20, 2008. FDA is correcting the addresses of both Pfizer, Inc., and Danisco USA, Inc.

DATES: This correction is effective July 2, 2008.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Regulations Editorial Section (HF–27), Food and Drug Administration, 5600 Fishers Ln., Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. E8–13998, published on June 20, 2008 (73 FR 35142), the following corrections are made:

1. On page 35143, in the first column, in the **SUPPLEMENTARY INFORMATION** section, the address for Pfizer, Inc., is corrected to read ''235 East 42d St., New York, NY 10017''.

2. Also on page 35143, in the first column, in the **SUPPLEMENTARY INFORMATION** section, the address for Danisco USA, Inc., is corrected to read ''565 Taxter Rd., suite 590, Elmsford, NY 10523''.

Dated: June 26, 2008.

Laura M. Tarantino,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. E8–14998 Filed 7–1–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism

Special Emphasis Panel: Review of Deferred Applications.

Date: August 6, 2008.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Room 3043, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892–9304, 301–443–2369, *lgunzera@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–14925 Filed 7–1–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Multiple Study Data Coordinating Center for DESPR.

Date: July 14, 2008.

Time: 10 a.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: Anne Krey, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, Bethesda, MD 20892, 301–435–6908.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–14938 Filed 7–1–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2008–0068]

Committee Name: Homeland Security Information Network Advisory Committee

AGENCY: Department of Homeland Security.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Homeland Security Information Network Advisory Committee (HSINAC) will meet from July 31–August 1, 2008, in Potomac, MD. The meeting will be open to the public.

DATES: The HSINAC will meet Thursday, July 31, 2008, from 9 a.m. to 4:30 p.m. and on Friday, August 1, 2008, from 8:30 a.m. to 4:30 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at the Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854–4436. Send written material, comments, and requests to make oral presentations to Elliott Langer, Department of Homeland Security, 245 Murray Lane, SW., Bldg. 410, Washington, DC 20528. Requests to make oral statements at the meeting should reach the contact person listed below by July 24, 2008. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by July 24, 2008. Comments must be identified by DHS–2008–0068 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: Elliott.langer@dhs.gov*. Include the docket number in the subject line of the message.
- *Fax:* 202–282–8191.
- *Mail:* Elliott Langer, Department of Homeland Security, 245 Murray Lane, SW., Building 410, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the Homeland Security Information Network Advisory Committee, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Elliott Langer, 245 Murray Lane, SW., Bldg. 410, Washington, DC 20528, *Elliott.langer@dhs.gov*, 202–282–8978, fax 202–282–8191.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The mission of the HSINAC is to identify issues and provide independent advice and recommendations for the improvement of HSIN to senior leadership of the Department, in particular the Director of Operations Coordination and Planning. The agenda for this meeting will include an update on efforts concerning the improvement of HSIN, the development

of the Next Generation of HSIN and discussions to develop a methodology of collecting and validating HSIN community User input and User based requirements.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Participation in HSINAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

All visitors to Bolger Center will have to pre-register to be admitted to the building. Please provide your name and telephone number by close of business on July 24, 2008, to Elliott Langer (202–282–8978) (*Elliott.langer@dhs.gov*).

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Elliott Langer as soon as possible.

Roger T Rufe, Jr.,

Director of Operations Coordination and Planning.

[FR Doc. E8–14941 Filed 7–1–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–0221]

Collection of Information under Review by Office of Management and Budget: OMB Control Numbers: 1625–0006

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) requesting an extension of their approval for the following collection of information: (1) 1625–0006, Shipping Articles. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before August 1, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2008–0221] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) or to OIRA. To avoid duplication, please submit your comments by only one of the following means:

(1) Electronic submission. (a) To Coast Guard docket at *http://www.regulation.gov.* (b) To OIRA by e-mail to: *oira_submission@omb.eop.gov.*

(2) Mail or Hand delivery. (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(3) Fax. (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in time, mark the fax to the attention of the Desk Officer for the Coast Guard.

The DMF maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

A copy of the complete ICR is available through this docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (*Attn:* Mr. Arthur Requina), 2100 2nd Street SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

The Coast Guard invites comments on whether this information collection request should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. Comments to Coast Guard must contain the docket number of this request, [USCG 2008–0221]. For your comments to OIRA to be considered, it is best if they are received on or before August 1, 2008.

Public participation and request for comments: We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2008–0221], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them. The Coast Guard and OIRA will consider all comments and material received during the comment period.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this notice as being available in the docket. Enter the docket number [USCG–2008–0221] in the Search box, and click, ''Go>>.'' You may also visit the DMF in

room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or by visiting *http://DocketsInfo.dot.gov.*

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (73 FR 19857, April 11, 2008) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

Information Collection Request

1. *Title:* Shipping Articles.

OMB Control Number: 1625–0006.

Type of Request: Extension of a currently approved collection.

Affected Public: Business or other for-profit companies.

Abstract: Sections 10302 and 10502 of 46 U.S.C. and 46 CFR 14.201 mandate that the owner, charterer, managing operator, master, or individual in charge shall make a shipping agreement in writing with each seaman before commencing employment. Section 14.313 of 46 CFR mandates that shipping companies maintain the shipping articles and after 3 years deliver them to Coast Guard custody for storage at the Federal Records Center in Suitland, MD. In addition, shipping companies must provide copies of shipping articles to the Coast Guard upon request.

Burden Estimate: The estimated burden remains 18,000 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: June 26, 2008.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8–15034 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–0202]

Collection of Information under Review by Office of Management and Budget: OMB Control Numbers: 1625–0044, 1625–0045, and 1625–0060

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding three Information Collection Requests (ICRs), abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) requesting an extension of their approval for the following collections of information: (1) 1625–0044, Outer Continental Shelf Activities—Title 33 CFR Subchapter N; (2) 1625–0045, Adequacy Certification for Reception Facilities and Advance Notices—33 CFR part 158; and (3) 1625–0060, Vapor Control Systems for Facilities and Tank Vessels. Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before August 1, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2008–0202] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) or to OIRA. To avoid duplication, please submit your comments by only one of the following means:

(1) Electronic submission. (a) To Coast Guard docket at *http://www.regulation.gov.* (b) To OIRA by e-mail to: *oira_submission@omb.eop.gov.*

(2) Mail or Hand delivery. (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(3) Fax. (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in time, mark the fax to the attention of the Desk Officer for the Coast Guard.

The DMF maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (*Attn:* Mr. Arthur Requina), 2100 2nd Street SW, Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

The Coast Guard invites comments on whether this information collection request should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. Comments to Coast Guard must contain the docket number of this request, [USCG 2008–0202]. For your comments to OIRA to be considered, it is best if they are received on or before the August 1, 2008.

Public participation and request for comments: We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2008–0202], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them. The Coast Guard and OIRA will consider all comments and material received during the comment period.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this notice as being available in the docket. Enter the docket number [USCG–2008–0202] in the Search box, and click, ''Go>>.'' You may also visit the DMF in room W12–140 in the West Building, Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or by visiting *http://DocketsInfo.dot.gov*.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (73 FR 19080, April 8, 2008) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

Information Collection Request

1. *Title:* Outer Continental Shelf Activities—Title 33 CFR subchapter N.

OMB Control Number: 1625–0044.

Type of Request: Revision of a currently approved collection.

Affected Public: Operators of facilities and vessels engaged in activities on the Outer Continental Shelf (OCS).

Abstract: The Outer Continental Shelf Lands Act, as amended, authorizes the Coast Guard to promulgate and enforce regulations promoting the safety of life and property on OCS facilities. These regulations are located in 33 CFR chapter I subchapter N.

Burden Estimate: The estimated burden has increased from 5,867 hours to 6,233 hours a year.

2. *Title:* Adequacy Certification for Reception Facilities and Advance Notices—33 CFR part 158.

OMB Control Number: 1625–0045.

Type of Request: Revision of a currently approved collection.

Affected Public: Owners and operators of reception facilities, and owners/operators of vessels.

Abstract: Section 1905 of 33 U.S.C. gives the Coast Guard the authority to certify the adequacy of reception facilities in ports. Reception facilities are needed to receive waste from ships which may not be discharged at sea. Under regulations in 33 CFR part 158 there are discharge limitations for oil/oily waste, noxious liquid substances, plastics, and other garbage. This information collection is needed to evaluate the adequacy of reception facilities prior to issuance of a Certificate of Adequacy. Information for the advance notice ensures effective management of reception facilities and reduces the burden to facilities and ships.

Burden Estimate: The estimated burden has increased from 1,058 hours to 1,529 hours a year.

3. *Title:* Vapor Control Systems for Facilities and Tank Vessels.

OMB Control Number: 1625–0060.

Type of Request: Revision of a currently approved collection.

Affected Public: Respondents are owners/operators of facilities, tank vessels, and certifying entities.

Abstract: Section 1225 of 33 U.S.C. and 46 U.S.C. 3703 authorize the Coast Guard to establish regulations to promote the safety of life and property of facilities and vessels. Subpart E of 33 CFR part 154 contains Coast Guard regulations for vapor control systems (VCS) and certifying entities. The information is needed to ensure compliance with U.S. regulations for the design of facility and tank vessel VCS. The information is also needed to determine the qualifications of a certifying entity.

Burden Estimate: The estimated burden has increased from 1,145 hours to 2,724 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: June 26, 2008.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8–15035 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–0222]

Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers: 1625–0067 and 1625–0068

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding two Information Collection Requests (ICRs), abstracted below, to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) requesting an extension of their approval for the following collections of information: (1) 1625–0067, Claims Under the Oil Pollution Act of 1990 and; (2) 1625–0068, State Access to the Oil Spill Liability Trust Fund for Removal Costs Under the Oil Pollution Act of 1990. Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before August 1, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2008–0222] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) or to OIRA. To avoid duplication, please submit your comments by only one of the following means:

(1) Electronic submission: (a) To Coast Guard docket at *http://www.regulation.gov*. (b) To OIRA by e-mail to *oira_submission@omb.eop.gov*.

(2) Mail or Hand delivery: (a) DMF (M–30), DOT, West Building, Ground Floor, Room W12–140, 1200 New Jersey

Avenue, SE., Washington, DC 20590–0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(3) Fax: (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in time, mark the fax to the attention of the Desk Officer for the Coast Guard.

The DMF maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building ground floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov*.

Copies of the complete ICRs are available through this docket on the Internet at *http://www.regulations.gov*. Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (*Attn:* Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on whether this information collection request should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. Comments to Coast Guard must contain the docket number of this request, [USCG 2008–0222]. For your comments to OIRA to be considered, it is best if they are received on or before August 1, 2008.

Public participation and request for comments: We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov*. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2008–0222], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them. The Coast Guard and OIRA will consider all comments and material received during the comment period.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this notice as being available in the docket. Enter the docket number [USCG–2008–0222] in the Search box, and click, ''Go>>.'' You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or by visiting *http://DocketsInfo.dot.gov*.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (73 FR 19858, April 11, 2008) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

Information Collection Request

1. *Title:* Claims Under the Oil Pollution Act of 1990.

OMB Control Number: 1625–0067.

Type of Request: Extension of a currently approved collection.

Affected Public: Claimants and responsible parties of oil spills.

Abstract: The Coast Guard will use the information collected under this information collection request to: (1) Determine whether oil-spill-related claims submitted to the Oil Spill Liability Trust Fund under section 1013 of the Oil Pollution Act of 1990 (33 U.S.C. 2713) are compensable and; (2) if they are, to ensure proper compensation for the claimant.

Burden Estimate: The estimated burden has decreased from 14,800 hours to 8,267 hours per year.

2. *Title:* State Access to the Oil Spill Liability Trust Fund for Removal Costs Under the Oil Pollution Act of 1990.

OMB Control Number: 1625–0068.

Type of Request: Extension of a currently approved collection.

Affected Public: Anyone claiming an Oil Pollution Act (OPA) damage or removal cost as a result of an OPA incident.

Abstract: The Coast Guard will use information provided by the State to the Coast Guard National Pollution Funds Center to determine whether those expenditures regarding the Oil Spill Liability Trust Fund are compensable under 33 U.S.C. 2713 and, if they are, to ensure payment for the correct amount of funding from the Fund.

Burden Estimate: The estimated burden remains 3 hours per year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: June 26, 2008.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8–15036 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; Revision of a currently approved collection 1660–0061, FEMA Form 90–153.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Collection of Information

Title: Federal Assistance to Individuals and Households Program (IHP).

OMB Number: 1660–0061.

Abstract: The Federal Assistance to Individuals and Households Program (IHP) enhances applicants' ability to request approval of late applications, request continued assistance, and appeal program decisions. Similarly, it allows States to partner with FEMA for delivery of disaster assistance under the ''Other Needs'' provision of the IHP through Administrative Option Agreements and Administration Plans addressing the level of managerial and resource support necessary.

Affected Public: Individuals and households; State, local and tribal government.

Number of Respondents: 321,042. The number of respondents has been increased since publication of the 60-day **Federal Register** Notice at 73 FR 22964, April 28, 2008.

Estimated Time per Respondent: 1.56 hours.

Estimated Total Annual Burden Hours: 500,353. The total Annual Burden Hours has increased since publication of the 60-day **Federal Register** Notice at 73 FR 22964, April 28, 2008.

Frequency of Response: On occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer for the Federal Emergency Management Agency, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before August 1, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Samuel C. Smith,

Acting Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–14959 Filed 7–1–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; Revision of a currently approved collection OMB Number 1660–0058, FEMA Form 90–58; FEMA Form 90–133; FEMA Form 90–32.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Collection of Information

Title: Fire Management Assistance Grant Program.

OMB Number: Revision of currently approved collection.

Abstract: The information collection is used by both State and FEMA regional staff to facilitate the declaration request and grant administration processes of Fire Management Assistance Grant Program (FMAGP), as well as end of year internal reporting of overall declaration requests and estimated grant outlays. The information collected allows the President to provide assistance to any State or local government for the mitigation, management, and control of any fire on public or private land that constitutes a major disaster. Also a part of this collection is the ability for the respondents to appeal a decision regarding a grant award, a requirement for awardees to provide a listing of benefits that might constitute a duplication if an award is made, and the ability for respondents to request training on changes and additions to the rules and regulations that affect grant applications.

Affected Public: State, local, or Tribal Government.

Number of Respondents: 18.

Estimated Time per Respondent: 12.6 hours: State Administrative Plan for Fire Management Assistance, 8 hours; FEMA State Agreement and Amendment, 1 hour; FEMA Form 90–58, 1 hour; FEMA Form 90–133, 10 minutes; FEMA Form 90–32, 20 minutes; Appeal letter, 1 hour; Duplication of Benefits notification, 1 hour; training request, 5 minutes.

Estimated Total Annual Burden Hours: 334.5.

Frequency of Response: On occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer for the Federal Emergency Management Agency, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before August 1, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202, facsimile number

(202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Samuel C. Smith,

Acting Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–14960 Filed 7–1–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; Revision of a currently approved collection 1660–0044, FEMA Form 95–56.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Collection of Information

Title: Emergency Management Institute Follow-Up Evaluation Survey.

OMB Number: 1660–0044.

Abstract: The Emergency Management Institute Follow-Up Evaluation Survey allows trainees at the Emergency Management Institute to self-assess the knowledge and skills gained through emergency management-related courses and the extent to which they have been beneficial and applicable in the conduct of their official positions. The information collected is used to review course content and offerings for program planning and management purposes.

Affected Public: Individuals or households, State, local or tribal government.

Number of Respondents: 3,800.

Estimated Time per Respondent: .25 Hours.

Estimated Total Annual Burden Hours: 950.

Frequency of Response: On occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer for the Federal Emergency Management Agency, Department of Homeland Security, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before August 1, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Samuel C. Smith,

Acting Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–14961 Filed 7–1–08; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2001–11120]

Intent To Request Renewal From OMB of One Current Public Collection of Information; Imposition and Collection of Passenger Civil Aviation Security Service Fees

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), OMB Control Number 1652–0001, abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collection involves air carriers maintaining an accounting system to account for the passenger civil aviation security service fees collected and reporting this information to TSA on a quarterly basis, as well as retaining the data used for these reports for a six-year rolling period.

DATES: Send your comments by September 2, 2008.

ADDRESSES: Comments may be mailed or delivered to Joanna Johnson, Communications Branch, Business Management Office, Operational Process and Technology, TSA–32, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651 or facsimile (571) 227–3588.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0001; Imposition and Collection of Passenger Civil Aviation Security Service Fees. In accordance with 49 U.S.C. 44940, the Transportation Security Administration (TSA) imposes a security service fee on passengers of air carriers and foreign air carriers (''air carriers'') in air transportation on flights originating at airports in the United States to assist with aviation security costs. 49 CFR part 1510.

This information collection requires air carriers to submit to TSA certain information necessary for TSA to impose, collect, and regulate the Passenger Civil Aviation Security Service Fees (September 11th Security Fee), which is used to help defray the costs of providing Federal civil aviation

security services, and to retain this information for a six-year rolling period. For instance, air carriers must keep the information collected during Fiscal Year 2008 until the expiration of Fiscal Year 2013. TSA collects the information related to the September 11th Security Fee to monitor carrier compliance with the fee requirements, for auditing purposes, and to track performance measures.

TSA rules require air carriers to impose and collect the fee on passengers, and to submit the fee to TSA by the final day of the calendar month following the month in which the fee was collected. 49 CFR 1510.13. Air carriers are further required to submit quarterly reports to TSA, which provide an accounting of the fees imposed, collected, and refunded to passengers and remitted to TSA. 49 CFR 1510.17. The fee amount collected from each passenger is $2.50 per enplanement originating in the United States. Passengers may not be charged for more than two enplanements per one-way trip or four enplanements per round trip. 49 CFR 1510.5.

Each air carrier that collects security service fees from more than 50,000 passengers annually is also required under 49 CFR 1510.15 to submit to TSA an annual independent audit, performed by an independent certified public accountant, of its security service fee activities and accounts. Although the annual independent audit requirements were suspended on January 23, 2003 (68 FR 3192), TSA conducts its own audits of the air carriers. 49 CFR 1510.11. Notwithstanding the suspension of the audit requirements, air carriers must establish and maintain an accounting system to account for the security service fees imposed, collected, refunded and remitted. 49 CFR 1510.15(a).

TSA is seeking renewal of this collection to require air carriers to continue submitting the quarterly reports to TSA, and to require air carriers to retain the information for a six-year rolling period. This requirement includes retaining the source information for the quarterly reports remitted to TSA, and the calculations and allocations performed to remit reports to TSA. Should the auditing requirement be reinstated, the requirement would include information and documents reviewed and prepared for the independent audit; the accountant's working papers, notes, worksheets, and other relevant documentation used in the audit; and, if applicable, the specific information leading to the accountant's opinion, including any determination that the accountant could not provide an audit opinion. Although TSA suspended the independent audits, TSA conducts audits of the air carriers, and therefore, requires air carriers to retain and provide the same information as required for the quarterly reports and independent audits.

TSA estimates that 196 total respondent air carriers will spend approximately 1 hour per quarterly report, for a total of 784 hours per year. Should TSA reinstate the audit requirement, TSA estimates that 105 air carriers would be required to submit annual audits, on which they would spend approximately 20 hours for preparation, for a total of 2,100 hours annually. TSA estimates the total for quarterly reports and annual audits is 2,884 hours.

For the quarterly reports and TSA's audits, TSA estimates that the 196 air carriers will each incur an average cost of $462.88 annually. This estimate includes $100 in staff time for preparation of the reports (at $25 per hour, each quarterly report is estimated to take 1 hour to prepare), $361.20 in annual records storage related costs, and $1.68 for postage for the report (4 stamps at 42 cents each). TSA estimates an aggregate annual cost of $90,724.48 for the airlines to prepare, submit, and store quarterly reports, and an aggregate cost of $272,173.44 for the three years of the renewal period.

Should TSA reinstate the annual audit requirement, TSA estimates total annual cost for this collection at $315,000 (105 air carriers, at an estimated rate of $150 per hour, at 20 hours per report). For the three-year period of the renewal, TSA estimates the total aggregate cost of the annual audit requirement to be $945,000, and $1,217,173.44 for the three-year extension of both quarterly reports and annual audits.

Issued in Arlington, Virginia, on June 26, 2008.

Kriste Jordan,

Program Manager, Business Improvements and Communications, Office of Information Technology.

[FR Doc. E8–15013 Filed 7–1–08; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5188–N–10]

Notice of Proposed Information Collection: Comment Request; CDBG Urban County/New York Towns Qualification/Requalification Process, Notice

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 2, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4176, Washington, DC 20410; telephone: 202–708–2374 (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian.L.Deitzer@hud.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Steve Johnson, Director, Entitlement Communities Division, Office of Block Grant Assistance, 451 7th Street, SW., Room 7282, Washington, DC 20410; telephone (202) 708–1577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice solicits comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the affected agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Community Development Block Grant (CDBG) Urban County and New York Towns Qualification/Requalification Processes.

OMB Control Number, if applicable: 2506–0170.

Description of the need for the information and proposed use: The Housing and Community Development Act of 1974, as amended, at sections 102(a)(6) and 102(e) requires that any county seeking qualification as an urban county notify each unit of general local government within the county that such unit may enter into a cooperation agreement to participate in the CDBG program as part of the county. Section 102(d) of the statute specifies that the period of qualification will be three years. Based on these statutory provisions, counties seeking qualification or requalification as urban counties under the CDBG program must provide information to HUD every three years identifying the units of general local governments (UGLGs) within the county participating as a part of the county for purposes of receiving CDBG funds. The population of UGLGs for each eligible urban county and New York town are used in HUD's allocation of CDBG funds for all entitlement and State CDBG grantees.

New York towns must undertake a similar process every three years because under New York state law, New York towns that contain incorporated UGLGs within their boundaries cannot qualify as metropolitan cities unless they execute cooperation agreements with all such incorporated units. The New York town qualification process must be completed prior to the qualification of urban counties so that any town that does not qualify as a metropolitan city will still have an opportunity to participate as part of an urban county.

Agency form numbers, if applicable: N/A.

Members of affected public: Urban counties and New York towns that are eligible as entitlement grantees of the CDBG program.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: There are currently 175 qualified urban counties participating in the CDBG program that must requalify every three years. On average, four new counties qualify each year. The burden on new counties is greater than for existing counties that requalify. The Department estimates new grantees use, on average, 100 hours to review instructions, contact communities in the county, prepare and review agreements, obtain legal opinions, have agreements executed at the local and county level, and prepare and transmit copies of required documents to HUD. The Department estimates that counties that are requalifying use, on average, 60 hours to complete these actions. The time savings on requalification is primarily a result of a grantee's ability to use agreements with no specified end date. Use of such ''renewable'' agreements enables the grantee to merely notify affected participating UGLGs in writing that their agreement will automatically be renewed unless the UGLG terminates the agreement in writing, rather than executing a new agreement every three years.

There are 10 New York towns that requalify every three years. They, too, may use ''renewable'' agreements that reduce the burden required under this process. The Department estimates that New York towns, on average, use 50 hours every three years to complete the requalification process.

Average of 4 new urban counties qualify per year:

4×100 hrs = 400 hrs.

175 grantees requalify on triennial basis; average annual number of respondents = 55:

55×60 hrs. = 3,300 hrs.

10 towns requalify every three years; average annual number of respondents = 3.3:

3.3×50 = 165 hrs.

Total combined burden hours: 3,865 hrs.

This total number of combined burden hours can be expected to increase by 400 hours annually, given the average of four new urban counties becoming eligible entitlement grantees each year.

Status of the proposed information collection: Existing collection number will expire October 31, 2008.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 26, 2008.

Nelson R. Bregón,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. E8–15025 Filed 7–1–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5188–N–09]

Notice of Proposed Information Collection; Comment Request

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* September 2, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4176, Washington, DC 20410; telephone: 202–708–2374, (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian_L._Deitzer@HUD.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Francis P. McNally, Congressional Grants Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone 202–402–7100 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate

automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Congressional Earmarks Grants.

OMB Control Number, if applicable: 2506–Pending.

Description of the need for the information and proposed use: This information is to be submitted by grant applicants to obtain higher rating points based on association with successful efforts to remove regulatory barriers which may impede the production of affordable housing.

Agency form numbers, if applicable: SF424, SFLLL, SF 424 B, SF1199A, SF269A, HUD27053, HUD27054, and HUD27056.

Members of Affected Public: Non-profit organization, local governments or Tribal government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Frequency of Submission: On occasion

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	777	1		2		1,554

Total Estimated Burden Hours: 1,554.

Status of the proposed information collection: In process.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 20, 2008.

Nelson R. Bregón,

General Deputy Assistant Secretary, Community Planning and Development.

[FR Doc. E8–15027 Filed 7–1–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5193–N–05]

Notice of Proposed Information Collection to OMB for Public Comment: 2009 American Housing Survey—National Sample; 2009 American Housing Survey—Metropolitan Sample

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: September 2, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8234, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: David A. Vandenbroucke at (202) 708–5890 (this is not a toll-free number), or Tamara Cole, Bureau of the Census, Housing and Household Economic Statistics Division, Washington, DC 20233, (301) 763–3235 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, (e.g., permitting electronic submission of responses).

This Notice also lists the following information:

(A) *Title of Proposal:* 2009 American Housing Survey—National Sample.

OMB Control Number: 2528–0017.

(B) *Title of Proposal:* 2009 American Housing Survey—Metropolitan Sample.

OMB Control Number: 2528–0016.

Description of the need for the information and proposed use: The 2009 American Housing Survey National Sample (AHS–N) and the 2009 American Housing Survey Metropolitan Sample (AHS–MS) provide a periodic measure of the size and composition of the housing inventory with the former capturing it for the country and the latter for select metropolitan areas. Title 12, United States Code, Sections 1701Z–1, 1701Z–2(g), and 1710Z–10a mandates the collection of this information.

The 2009 surveys are similar to previous AHS–N and AHS–MS surveys in that they collect data on subjects such as the amount and types of changes in the inventory, the physical condition of the inventory, the characteristics of the occupants, the persons eligible for and beneficiaries of assisted housing by race and ethnicity, and the number and characteristics of vacancies. Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of public policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

The Department of Housing and Urban Development (HUD) needs the AHS data for two important uses.

1. With the data, policy analysts can monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly.

2. With the data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

Agency Form Numbers: Computerized Versions of AHS–21/61, AHS–22/62 and AHS–23/63.

Members of affected public: Households.

Estimation of the total number of hours needed to prepare the information

collection including number of respondents, frequency of response, and hours of response:

	National sample	Metropolitan sample
Number of respondents	60,966	2,500.
Estimate responses per respondent	1 every 2 years	1 every 6 to 8 years.
Time (minutes) per respondent	34	34.
Total hours to respond	34,547	1,417.

Respondent's Obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 13 U.S.C. Section 9(a), and Title 12, U.S.C., Section 1701z–1.

Dated: June 25, 2008.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

[FR Doc. E8–15030 Filed 7–1–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–921–03–1320–EL; COC–73016]

Amended Notice of Invitation for Coal Exploration License Application, Colorado Coal Resources, LLC; COC–73016; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation for Coal Exploration License Application, Colorado Coal Resources, LLC.

SUMMARY: Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Colorado Coal Resources, LLC, in a program for the exploration of unleased coal deposits owned by the United States of America containing approximately 3,980.0 acres in Routt County, Colorado.

DATES: Written Notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them within 30 days after publication of this Notice of Invitation in the **Federal Register**.

ADDRESSES: Kurt M. Barton, CO–921, Solid Minerals Staff, Division of Energy, Lands and Minerals, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215; and, Colorado Coal Resources, LLC, 701 Market Street, St. Louis, MO 63101.

SUPPLEMENTARY INFORMATION: The application for coal exploration license is available for public inspection during normal business hours under serial number COC–73016 at the Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215; and at the Little Snake Field Office, 455 Emerson St., Craig, Colorado 81625. Any party electing to participate in this program must share all costs on a pro rata basis with Colorado Coal Resources, LLC, and with any other party or parties who elect to participate.

Kurt M. Barton,

Solid Minerals Staff, Division of Energy, Lands and Minerals.

[FR Doc. E8–14981 Filed 7–1–08; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–923–1310–FI; NVN–74775; 8–08807; TAS: 14x1109]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease NVN–74775 for lands in Eureka County, Nevada, was timely filed and was accompanied by all the required rentals accruing from August 1, 2006, the date of termination. No valid lease has been issued affecting the lands. The lessee, Newmont Mining Corporation has agreed to new lease terms for rentals and royalties at rates of $10 per acre or fraction thereof and 16⅔ percent, respectively. Newmont Mining Corporation has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management (BLM) for the cost of this **Federal Register** notice. Newmont Mining Corporation has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate the lease effective August 1, 2006, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Chris Pulliam, BLM Nevada State Office, 775–861–6506.

Authority: 43 CFR 3108.2–3(a).

Dated: June 18, 2008.

Gary Johnson,

Deputy State Director, Minerals Management.

[FR Doc. E8–14977 Filed 7–1–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 26, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number) / e-mail: *king.darrin@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone:

202–395–7316 / Fax: 202–395–6974 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title: Unemployment Insurance (UI) State Quality Service Plan (SQSP).

OMB Control Number: 1205–0132.

Form Number: ETA–2208A and ETA–8623A.

Affected Public: State Governments.

Estimated Number of Respondents: 53.

Estimated Total Annual Burden Hours: 1,810.

Estimated Total Annual Costs Burden: $0.

Description: The SQSP is one of several implementing documents for UI PERFORMS, that allows for an exchange of information between the Federal and State partners to enhance the ability of the program to reflect the joint commitment to continuous improvement and client centered services. For additional information, see related notice published at 73 FR 18302 on April 3, 2008.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E8–14946 Filed 7–1–08; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposal to extend OMB approval of the information collection: Application for Federal Certificate of Age Regulations 29 CFR Part 570, Subpart B (WH–14). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before September 2, 2008.

ADDRESSES: Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background: Fair Labor Standards Act (FLSA) section 3(l), 29 U.S.C. 203(l), provides, in part, that an employer may protect against unwitting employment of ''oppressive child labor,'' as defined in section 3(l), by having on file an unexpired certificate issued pursuant to Department of Labor regulations certifying that the named person meets the FLSA minimum age requirements for employment. FLSA section 11(c) requires all employers covered by the FLSA to make, keep, and preserve records of employees and of wages, hours, and other conditions and practices of employment. A FLSA covered employer must maintain the records for such period of time and make such reports as prescribed by regulations issued by the Secretary of Labor. Form WH–14 is the application employers submit to obtain Federal Certificates of Age to protect themselves against unwitting child labor violations of the Fair Labor Standards Act. This information collection is currently approved for use through December 31, 2008.

II. Review Focus: The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks approval for the extension of this currently approved information collection in order to protect employers form unwitting violation of the minimum age standards of the Fair Labor Standards Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Application for Federal Certificate of Age.

OMB Number: 1215–0083.

Agency Number: WH–14, Affected Public: Business or not for-profit, Not-for-profit institution, Farms, and State, Local or Tribal Government.

Total Respondents: 10.

Total Annual Responses: 10.

Estimated Time per Response: 10 minutes.

Reporting: 1.67

Recordkeeping: .083

Estimated Total Burden Hours: 1.75.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the

information collection request; they will also become a matter of public record.

Dated: June 26, 2008.

Hazel M. Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E8–14978 Filed 7–1–08; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend OMB approval of the information collection: Notice of Controversion of Right to Compensation (LS–207). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before September 2, 2008.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background: The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act (LHWCA). The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining areas customarily used by an employer in loading, unloading, repairing or building a vessel. In addition, several acts extend Longshore Act coverage to certain other employees. Pursuant to section 914(d) of the Longshore Act, and 20 CFR 702.251, if an employer controverts the right to compensation, he/she shall file with the district director in the affected compensation district on or before the fourteenth day after he/she has knowledge of the alleged injury or death, a notice, in accordance with a form prescribed by the Secretary, stating that the right to compensation is controverted. Form LS–207 has been designated for this purpose. Form LS–207 is used by insurance carriers and self-insured employers to controvert claims under the Longshore Act and extensions. The information is used by OWCP district offices to determine the basis for not paying benefits in a case. This information collection is currently approved for use through December 31, 2008.

II. Review Focus: The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks the approval for the extension of this currently approved information collection in order to carry out its responsibility to meet the statutory requirements to provide compensation or death benefits under the Act to workers covered under the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Notice of Controversion of Right to Compensation.

OMB Number: 1215–0023.

Agency Numbers: LS–207.

Affected Public: Business or other for-profit.

Total Respondents: 700.

Total Annual responses: 17,500.

Estimated Total Burden Hours: 4,375.

Estimated Time Per Response: 15 minutes.

Frequency: On Occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $8,662.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Hazel M. Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E8–14979 Filed 7–1–08; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0014]

Acrylonitrile Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified by the Acrylonitrile Standard (29 CFR 1910.1045).

DATES: Comments must be submitted (postmarked, sent, or received) by September 2, 2008.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When

using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2008–0014, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2008–0014). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Jamaa Hill at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Jamaa N. Hill or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the Acrylonitrile (AN) Standard protect employees from the adverse health effects that may result from their exposure to AN. The major information collection requirements of the AN Standard include notifying employees of their AN exposures, implementing a written compliance program, providing examining physicians with specific information, ensuring that employees receive a copy of their medical examination results, maintaining employees' exposure monitoring and medical records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected employees, and designated representatives.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is proposing to extend the information collection requirements contained in the Acrylonitrile Standard (29 CFR 1910.1045). The Agency is requesting to decrease its current burden hour total from 3,237 hours to 3,166 for a total decrease of 71 hours. The adjustment is primarily a result of a decrease in the total number of affected employees (from 3,376 to 3,301). The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Standard. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Acrylonitrile Standard (29 CFR 1910.1045).

OMB Number: 1218–0126.

Affected Public: Business or other for-profits; Federal Government; State, Local or Tribal Government.

Frequency: On occasion.

Average Time per Response: Varies from 5 minutes (.08 hour) to provide information to the examining physician to 1 hour to conduct exposure monitoring.

Estimated Total Burden Hours: 3,166.

Estimated Cost (Operation and Maintenance): $180,946.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2008–0014). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on June 26, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–14980 Filed 7–1–08; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 1, 2008. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:* Kristin M. O'Brien, Institute of Arctic Biology, University of Alaska, Fairbanks, P.O. Box 757000, Fairbanks, AK 99775–7000.

Permit Application No. 2009–011.

Activity for Which Permit Is Requested

Take and Enter Antarctic Specially Protected Areas. The applicant plans to conduct fishing of benthic trawls and fish traps/pots to study the physiology and biochemistry of Antarctic fishes, with particular emphasis on Channichthyid ice fishes. Collection of specimens will be carried out on the ARSV L.M. Gould and transported back to the aquarium facilities at Palmer Station for experimentation. Animal capture by benthic Otter trawling is restricted to only those areas of bottom known to be relatively flat and muddy, in order to avoid damage to the net. There are a very limited number of locations that meet the criteria, such as ASPA 152—Western Bransfield Strait of Low Island, and ASPA 153—Eastern Dallman Bay off Brabant Island.

Location

ASPA 152—Western Bransfield Strait of Low Island, and ASPA 153—Eastern Dallman Bay off Brabant Island.

Dates

April 1, 2008 to July 1, 2011.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E8–14994 Filed 7–1–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on March 31, 2008.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 354, ''Data Report on Spouse.''

3. *Current OMB approval number:* 3150–0026.

4. *The form number if applicable:* NRC Form 354.

5. *How often the collection is required:* On occasion.

6. *Who will be required or asked to report:* NRC contractors, licensees, applicants and others (e.g. intervenor's) who marry or cohabitate after completing the Personnel Security Forms, or after having been granted an NRC access authorization or employment clearance.

7. *An estimate of the number of annual responses:* 60.

8. *The estimated number of annual respondents:* 60.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 12 hours (0.2 hours per response).

10. *Abstract:* NRC Form 354 must be completed by NRC contractors, licensees, and applicants who marry or cohabitate after completing the Personnel Security Forms, or after having been granted an NRC access authorization or employment clearance. Form 354 identifies the respondent, the marriage, and data on the spouse and spouse's parents. This information permits the NRC to make initial security determinations and to assure there is no increased risk to the common defense and security.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments and questions should be directed to the OMB reviewer listed below by August 1, 2008. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Nathan J. Frey, Office of Information and Regulatory Affairs (3150–0026), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan_J._Frey@omb.eop.gov* or submitted by telephone at (202) 395–7345.

The NRC Clearance Officer is Margaret A. Janney, (301) 415–7245.

Dated at Rockville, Maryland, this 24th day of June, 2008.

For the Nuclear Regulatory Commission.

Gregory Trussell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–14971 Filed 7–1–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[EA–08–162]

In the Matter of Licensee Identified in Attachment 1 and All Other Persons Who Seek or Obtain Access to Safeguards Information Described Herein; Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information (Effective Immediately)

I

The Licensee identified in Attachment 1 [1] to this Order, holds a license issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC or Commission), authorizing them to engage in an activity subject to regulation by the Commission or Agreement States. In accordance with Section 149 of the AEA, fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check are required of any person who is to be permitted to have access to Safeguards Information (SGI).[2] The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway. Although the AEA permits the Commission by rule to except certain categories of individuals from the fingerprinting requirement, which the Commission has done (see 10 CFR Part 73.59, 71 FR 33,989 (June 13, 2006)), it is unlikely that licensee employees or others are excepted from the fingerprinting requirement by the ''fingerprinting relief'' rule. Individuals relieved from fingerprinting and criminal history records checks under the relief rule include Federal, State, and local officials and law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress and certain employees of members of Congress or Congressional Committees, and representatives of the International Atomic Energy Agency (IAEA) or certain foreign government organizations. In addition, individuals who have a favorably-decided U.S. Government criminal history records check within the last five (5) years, or individuals who have active federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the AEA fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that affected licensees can obtain and grant access to SGI. This Order also imposes requirements for access to SGI by any person, from any person,[3] whether or not a Licensee, Applicant, or Certificate Holder of the Commission or Agreement States.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders as necessary to prohibit the unauthorized disclosure of SGI. Furthermore, Section 149 of the AEA requires fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless the person has an established need-to-know the information and satisfies the trustworthy and reliability requirements described in Attachment 3 to Order EA–08–161.

In order to provide assurance that the Licensees identified in Attachment 1 to this Order are implementing appropriate measures to comply with the fingerprinting and criminal history records check requirements for access to SGI, all Licensees identified in Attachment 1 to this Order shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Parts 30 and 73, *it is hereby ordered,* effective immediately, that all licensees identified in attachment 1 to this order and all other persons who seek or obtain access to safeguards information, as described above, shall comply with the requirements set forth in this order.

A. 1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted or who has a favorably-decided FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from that requirement by 10 CFR 73.59 (71 FR 33,989 (June 13, 2006)), or who has a favorably-decided U.S. Government criminal history records check within the last five (5) years, or who has an active federal security clearance, provided in the latter two cases that the appropriate

[1] Attachment 1 contains sensitive information and will not be released to the public.

[2] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under section 147 of the AEA.

[3] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, except that the Department of Energy shall be considered a person with respect to those facilities of the Department of Energy specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

documentation is made available to the Licensee's NRC-approved reviewing official described in paragraph III.C.2 of this Order.

2. No person may have access to any SGI if the NRC has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.

B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C. All Licensees identified in Attachment 1 to this Order shall comply with the following requirements:

1. The Licensee shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 2 to this Order.

2. The Licensee shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual who (a) the Licensee nominates as the ''reviewing official'' for determining access to SGI by other individuals, and (b) has an established need-to-know the information and has been determined to be trustworthy and reliable in accordance with the requirements described in Attachment 3 to Order EA–08–161. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as the Licensee's reviewing official.[4] The Licensee may, at the same time or later, submit the fingerprints of other individuals to whom the Licensee seeks to grant access to SGI or designate an additional reviewing official(s). Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 2 of this Order.

3. The Licensee shall, in writing, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in this Order, including Attachment 2 to this Order, or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

Licensee responses to C.1., C.2., and C.3. above shall be submitted to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee responses shall be marked as ''Security-Related Information—Withhold Under 10 CFR 2.390.''

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within twenty (20) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within twenty (20) days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule, which the NRC promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007) and codified in pertinent part at 10 CFR Part 2, Subpart B. The E–Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E–Filing, at least ten (10) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E–Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E–Filing system.

[4] The NRC's determination of this individual's access to SGI in accordance with the process described in Enclosure 5 to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immmediate effectiveness of this order.

Dated this 18th day of June 2008.

For the Nuclear Regulatory Commission.

George Pangburn,

Acting Director, Office of Federal and State Materials and Environmental Management Programs.

Attachment 1: List of Applicable Materials Licensees Redacted.

Attachment 2: Requirements for Fingerprinting and Criminal History Records Checks of Individuals When Licensee's Reviewing Official is Determining Access to Safeguards Information

Requirements for Fingerprinting and Criminal History Records Checks of Individuals When Licensee's Reviewing Official is Determining Access to Safeguards Information

General Requirements

Licensees shall comply with the requirements of this attachment.

A. 1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR Part 73.59, has a favorably-decided U.S. Government criminal history records check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history records check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements included in Attachment 3 to NRC Order EA–08–161, in making a determination whether to grant access to SGI to individuals who have a need-to-know the SGI.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The Licensee shall document the basis for its determination whether to grant access to SGI.

B. The Licensee shall notify the NRC of any desired change in reviewing officials. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained or new criminal history check and, therefore, will be permitted to serve as the Licensee's reviewing official.

Prohibitions

A Licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: An arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, Licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to Safeguards Information, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555, by calling (301) 415–7232, or by e-mail to *forms.resource@nrc.gov.* Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free resubmission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint submissions. The Commission will directly notify Licensees who are subject to this regulation of any fee changes.

The Commission will forward to the submitting Licensee all data received from the FBI as a result of the Licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

Right To Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR Part 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final SGI access determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI, the Licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to Safeguards Information. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI (whether access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

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NUCLEAR REGULATORY COMMISSION

[EA–08–161]

In the Matter of Licensee Identified in Attachment 1 and All Other Persons Who Obtain Safeguards Information Described Herein; Order Imposing Requirements for the Protection of Certain Safeguards Information (Effective Immediately)

I

The Licensee, identified in Attachment 1 [1] to this Order, holds a license issued in accordance with the Atomic Energy Act of 1954, as amended, (AEA) by the U.S. Nuclear Regulatory Commission (NRC or Commission), authorizing it to possess, use, and transfer items containing radioactive material quantities of concern. The NRC intends to issue security Orders to this licensee in the near future. The Order will require compliance with specific Additional Security Measures to enhance the security for certain radioactive material quantities of concern. The Commission has determined that these documents will contain Safeguards Information, will not be released to the public, and must be protected from unauthorized disclosure. Therefore, the Commission is imposing the requirements, as set forth in Attachments 2 and 3 to this Order and in Order EA–08–162, so that the Licensee can receive these documents. This Order also imposes requirements for the protection of Safeguards Information in the hands of any person,[2] whether or not a licensee of the Commission, who produces, receives, or acquires Safeguards Information.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of Safeguards Information. Section 147 of the AEA grants the Commission explicit authority to ''* * * issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards

[1] Attachment 1 contains sensitive information and will not be released to the public.

[2] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, except that the Department of Energy shall be considered a person with respect to those facilities of the Department of Energy specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

information * * *'' This authority extends to information concerning the security measures for the physical protection of special nuclear material, source material, and byproduct material. Licensees and all persons who produce, receive, or acquire Safeguards Information must ensure proper handling and protection of Safeguards Information to avoid unauthorized disclosure in accordance with the specific requirements for the protection of Safeguards Information contained in Attachments 2 and 3 to this Order. The Commission hereby provides notice that it intends to treat violations of the requirements contained in Attachments 2 and 3 to this Order applicable to the handling and unauthorized disclosure of Safeguards Information as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States.

Access to Safeguards Information is limited to those persons who have established the need-to-know the information, are considered to be trustworthy and reliable, and meet the requirements of Order EA–08–162. A need-to-know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment.

The Licensee and all other persons who obtain Safeguards Information must ensure that they develop, maintain and implement strict policies and procedures for the proper handling of Safeguards Information to prevent unauthorized disclosure, in accordance with the requirements in Attachments 2 and 3 to this Order. The Licensee must ensure that all contractors whose employees may have access to Safeguards Information either adhere to the licensee's policies and procedures on Safeguards Information or develop, or maintain and implement their own acceptable policies and procedures. The Licensee remains responsible for the conduct of their contractors. The policies and procedures necessary to ensure compliance with applicable requirements contained in Attachments 2 and 3 to this Order must address, at a minimum, the following: the general performance requirement that each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure; protection of Safeguards Information at fixed sites, in use and in storage, and while in transit; correspondence containing Safeguards Information; access to Safeguards Information; preparation, marking, reproduction and destruction of documents; external transmission of documents; use of automatic data processing systems; removal of the Safeguards Information category; the need-to-know the information; and background checks to determine access to the information.

In order to provide assurance that the Licensee is implementing prudent measures to achieve a consistent level of protection to prohibit the unauthorized disclosure of Safeguards Information, the Licensee shall implement the requirements identified in Attachments 2 and 3 to this Order. In addition, pursuant to 10 CFR Part 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 147, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30, 10 CFR Part 32, 10 CFR Part 35, 10 CFR Part 70, and 10 CFR Part 73, it is hereby ordered, effective immediately, that all licensees identified in Attachment 1 to this order and all other persons who produce, receive, or acquire the additional security measures identified above (whether draft or final) or any related safeguards information shall comply with the requirements of Attachments 2 and 3 to this order.

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the licensee.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within twenty (20) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within twenty (20) days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule, which the NRC promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007) and codified in pertinent part at 10 CFR Part 2, Subpart B. The E–Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E–Filing, at least ten (10) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E–Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E–Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 18th day of June 2008.

For the Nuclear Regulatory Commission

George Pangburn,

Acting Director, Office of Federal and State Materials and Environmental Management Programs.

Attachment 1: List of Applicable Materials Licensees Redacted.

Attachment 2: Modified Handling Requirements for the Protection of Certain Safeguards Information (SGI–M)

Modified Handling Requirements for the Protection of Certain Safeguards Information (SGI–M) General Requirement

Information and material that the U.S. Nuclear Regulatory Commission (NRC) determines are safeguards information must be protected from unauthorized disclosure. In order to distinguish information needing modified protection requirements from the safeguards information for reactors and fuel cycle facilities that require a higher level of protection, the term ''Safeguards Information-Modified Handling'' (SGI–M) is being used as the distinguishing marking for certain materials licensees. Each person who produces, receives, or acquires SGI–M shall ensure that it is protected against unauthorized disclosure. To meet this requirement, licensees and persons shall establish and maintain an information protection system that includes the measures specified below. Information protection procedures employed by state and local police forces are deemed to meet these requirements.

Persons Subject to These Requirements

Any person, whether or not a licensee of the NRC, who produces, receives, or acquires SGI–M is subject to the requirements (and sanctions) of this document. Firms and their employees that supply services or equipment to materials licensees would fall under this requirement if they possess facility SGI–M. A licensee must inform contractors and suppliers of the existence of these requirements and the need for proper protection. (See more under Conditions for Access.)

State or local police units who have access to SGI–M are also subject to these requirements. However, these organizations are deemed to have adequate information protection systems. The conditions for transfer of information to a third party, i.e., need-to-know, would still apply to the police organization as would sanctions for unlawful disclosure. Again, it would be prudent for licensees who have arrangements with local police to advise them of the existence of these requirements.

Criminal and Civil Sanctions

The Atomic Energy Act of 1954, as amended, explicitly provides that any person, ''whether or not a licensee of the Commission, who violates any regulations adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act.'' Furthermore, willful violation of any regulation or order governing safeguards information is a felony subject to criminal penalties in the form of fines or imprisonment, or both. *See sections 147b. and 223 of the Act.*

Conditions for Access

Access to SGI–M beyond the initial recipients of the order will be governed by the background check requirements imposed by the order. Access to SGI–M by licensee employees, agents, or contractors must include both an appropriate need-to-know determination by the licensee, as well as a determination concerning the trustworthiness of individuals having access to the information. Employees of an organization affiliated with the licensee's company, *e.g.*, a parent company, may be considered as employees of the licensee for access purposes.

Need-to-Know

Need-to-know is defined as a determination by a person having responsibility for protecting SGI–M that a proposed recipient's access to SGI–M is necessary in the performance of official, contractual, or licensee duties of employment. The recipient should be made aware that the information is SGI–M and those having access to it are subject to these requirements as well as criminal and civil sanctions for mishandling the information.

Occupational Groups

Dissemination of SGI–M is limited to individuals who have an established need-to-know and who are members of certain occupational groups. These occupational groups are:

A. An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government;

B. A member of a duly authorized committee of the Congress;

C. The Governor of a State or his designated representative;

D. A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC;

E. A member of a state or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies; or

F. A person to whom disclosure is ordered pursuant to Section 2.744(e) of Part 2 of part 10 of the Code of Federal Regulations.

G. State Radiation Control Program Directors (and State Homeland Security Directors) or their designees.

In a generic sense, the individuals described above in (A) through (G) are considered to be trustworthy by virtue of their employment status. For non-governmental individuals in group (A) above, a determination of reliability and trustworthiness is required. Discretion must be exercised in granting access to these individuals. If there is any indication that the recipient would be unwilling or unable to provide proper protection for the SGI–M, they are not authorized to receive SGI–M.

Information Considered for Safeguards Information Designation

Information deemed SGI–M is information the disclosure of which could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of materials or facilities subject to NRC jurisdiction.

SGI–M identifies safeguards information which is subject to these requirements. These requirements are necessary in order to protect quantities of nuclear material significant to the health and safety of the public or common defense and security.

The overall measure for consideration of SGI–M is the usefulness of the information (security or otherwise) to an adversary in planning or attempting a malevolent act. The specificity of the information increases the likelihood that it will be useful to an adversary.

Protection While in Use

While in use, SGI–M shall be under the control of an authorized individual. This requirement is satisfied if the SGI–M is attended by an authorized individual even though the information is in fact not constantly being used. SGI–M, therefore, within alarm stations, continuously manned guard posts or ready rooms need not be locked in file drawers or storage containers.

Under certain conditions the general control exercised over security zones or areas would be considered to meet this requirement. The primary consideration is limiting access to those who have a need-to-know. Some examples would be:

Alarm stations, guard posts and guard ready rooms;

Engineering or drafting areas if visitors are escorted and information is not clearly visible;

Plant maintenance areas if access is restricted and information is not clearly visible;

Administrative offices (e.g., central records or purchasing) if visitors are escorted and information is not clearly visible.

Protection While in Storage

While unattended, SGI–M shall be stored in a locked file drawer or container. Knowledge of lock combinations or access to keys protecting SGI–M shall be limited to a minimum number of personnel for operating purposes who have a ''need-to-know'' and are otherwise authorized access to SGI–M in accordance with these requirements. Access to lock combinations or keys shall be strictly controlled so as to prevent disclosure to an unauthorized individual.

Transportation of Documents and Other Matter

Documents containing SGI–M when transmitted outside an authorized place of use or storage shall be enclosed in two sealed envelopes or wrappers. The inner envelope or wrapper shall contain the name and address of the intended recipient, and be marked both sides, top and bottom with the words ''Safeguards Information—Modified Handling.'' The outer envelope or wrapper must be addressed to the intended recipient, must contain the address of the sender, and must not bear any markings or indication that the document contains SGI–M.

SGI–M may be transported by any commercial delivery company that provides nation-wide overnight service with computer tracking features, U.S. first class, registered, express, or certified mail, or by any individual authorized access pursuant to these requirements.

Within a facility, SGI–M may be transmitted using a single opaque envelope. It may also be transmitted within a facility without single or double wrapping, provided adequate measures are taken to protect the material against unauthorized disclosure. Individuals transporting SGI–M should retain the documents in their personal possession at all times or ensure that the information is appropriately wrapped and also secured to preclude compromise by an unauthorized individual.

Preparation and Marking of Documents

While the NRC is the sole authority for determining what specific information may be designated as ''SGI–M,'' originators of documents are responsible for determining whether those documents contain such information. Each document or other matter that contains SGI–M shall be marked ''Safeguards Information—Modified Handling'' in a conspicuous manner on the top and bottom of the first page to indicate the presence of protected information. The first page of the document must also contain (i) The name, title, and organization of the individual authorized to make a SGI–M determination, and who has determined that the document contains SGI–M, (ii) the date the document was originated or the determination made, (iii) an indication that the document contains SGI–M, and (iv) an indication that unauthorized disclosure would be subject to civil and criminal sanctions. Each additional page shall be marked in a conspicuous fashion at the top and bottom with letters denoting ''Safeguards Information Modified Handling.'' In additional to the ''Safeguards Information—Modified Handling'' markings at the top and bottom of each page, transmittal letters or memoranda which do not in themselves contain SGI–M shall be marked to indicate that attachments or enclosures contain SGI–M but that the transmittal does not (e.g., ''When separated from SGI–M enclosure(s), this document is decontrolled'').

In addition to the information required on the face of the document, each item of correspondence that contains SGI–M shall, by marking or other means, clearly indicate which portions (e.g., paragraphs, pages, or appendices) contain SGI–M and which do not. Portion marking is not required for physical security and safeguards contingency plans.

All documents or other matter containing SGI–M in use or storage shall be marked in accordance with these requirements. A specific exception is provided for documents in the possession of contractors and agents of licensees that were produced more than one year prior to the effective date of the order. Such documents need not be marked unless they are removed from file drawers or containers. The same exception applies to old documents stored away from the facility in central files or corporation headquarters.

Since information protection procedures employed by state and local police forces are deemed to meet NRC requirements,

documents in the possession of these agencies need not be marked as set forth in this document.

Removal From SGI–M Category

Documents containing SGI–M shall be removed from the SGI–M category (decontrolled) only after the NRC determines that the information no longer meets the criteria of SGI–M. Licensees have the authority to make determinations that specific documents which they created no longer contain SGI–M information and may be decontrolled. Consideration must be exercised to ensure that any document decontrolled shall not disclose SGI–M in some other form or be combined with other unprotected information to disclose SGI–M.

The authority to determine that a document may be decontrolled may be exercised only by, or with the permission of, the individual (or office) who made the original determination. The document shall indicate the name and organization of the individual removing the document from the SGI–M category and the date of the removal. Other persons who have the document in their possession should be notified of the decontrolling of the document.

Reproduction of Matter Containing SGI–M

SGI–M may be reproduced to the minimum extent necessary consistent with need without permission of the originator. Newer digital copiers which scan and retain images of documents represent a potential security concern. If the copier is retaining SGI–M information in memory, the copier cannot be connected to a network. It should also be placed in a location that is cleared and controlled for the authorized processing of SGI–M information. Different copiers have different capabilities, including some which come with features that allow the memory to be erased. Each copier would have to be examined from a physical security perspective.

Use of Automatic Data Processing (ADP) Systems

SGI–M may be processed or produced on an ADP system provided that the system is assigned to the licensee's or contractor's facility and requires the use of an entry code/password for access to stored information. Licensees are encouraged to process this information in a computing environment that has adequate computer security controls in place to prevent unauthorized access to the information. An ADP system is defined here as a data processing system having the capability of long term storage of SGI–M. Word processors such as typewriters are not subject to the requirements as long as they do not transmit information offsite. (Note: if SGI–M is produced on a typewriter, the ribbon must be removed and stored in the same manner as other SGI–M information or media.) The basic objective of these restrictions is to prevent access and retrieval of stored SGI–M by unauthorized individuals, particularly from remote terminals. Specific files containing SGI–M will be password protected to preclude access by an unauthorized individual. The National Institute of Standards and Technology (NIST) maintains a listing of all validated encryption systems at *http://csrc.nist.gov/cryptval/1401/1401val.htm.* SGI–M files may be transmitted over a network if the file is encrypted. In such cases, the licensee will select a commercially available encryption system that NIST has validated as conforming to Federal Information Processing Standards (FIPS). SGI–M files shall be properly labeled as ''Safeguards Information—Modified Handling'' and saved to removable media and stored in a locked file drawer or cabinet.

Telecommunications

SGI–M may not be transmitted by unprotected telecommunications circuits except under emergency or extraordinary conditions. For the purpose of this requirement, emergency or extraordinary conditions are defined as any circumstances that require immediate communications in order to report, summon assistance for, or respond to a security event (or an event that has potential security significance).

This restriction applies to telephone, telegraph, teletype, facsimile circuits, and to radio. Routine telephone or radio transmission between site security personnel, or between the site and local police, should be limited to message formats or codes that do not disclose facility security features or response procedures. Similarly, call-ins during transport should not disclose information useful to a potential adversary. Infrequent or non-repetitive telephone conversations regarding a physical security plan or program are permitted provided that the discussion is general in nature.

Individuals should use care when discussing SGI–M at meetings or in the presence of others to insure that the conversation is not overheard by persons not authorized access. Transcripts, tapes or minutes of meetings or hearings that contain SGI–M shall be marked and protected in accordance with these requirements.

Destruction

Documents containing SGI–M should be destroyed when no longer needed. They may be destroyed by tearing into small pieces, burning, shredding or any other method that precludes reconstruction by means available to the public at large. Piece sizes one half inch or smaller composed of several pages or documents and thoroughly mixed would be considered completely destroyed.

Attachment 3: Trustworthiness and Reliability Requirements for Individuals Handling Safeguards Information

Trustworthiness and Reliability Requirements for Individuals Handling Safeguards Information

In order to ensure the safe handling, use, and control of information designated as Safeguards Information, each licensee shall control and limit access to the information to only those individuals who have established the need-to-know the information, and are considered to be trustworthy and reliable. Licensees shall document the basis for concluding that there is reasonable assurance that individuals granted access to Safeguards Information are trustworthy and reliable, and do not constitute an unreasonable risk for malevolent use of the information.

The Licensee shall comply with the requirements of this attachment:

1. The trustworthiness and reliability of an individual shall be determined based on a background investigation:

(a) The background investigation shall address at least the past three (3) years, and, at a minimum, include verification of employment, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e., seeking references not supplied by the individual).

(b) If an individual's employment has been less than the required three (3) year period, educational references may be used in lieu of employment history.

The licensee's background investigation requirements may be satisfied for an individual that has an active Federal security clearance.

2. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

In order for an individual to be granted access to Safeguards Information, the individual must be determined to be trustworthy and reliable, as describe in requirement 1 above, and meet the requirements of NRC Order EA–08–162.

[FR Doc. E8–14973 Filed 7–1–08; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Peace Corps.

ACTION: Notice of information collection for review by OMB and public comment.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice invites the public to comment on the collection of information by the Peace Corps' Office of Communications, and gives notice of the Peace Corps' intention to request Office of Management and Budget (OMB) approval of the information collection. The Peace Corps' Office of Communications wishes to solicit stories and pictures from Returned Peace Corps Volunteers and other members of the public concerning the experience of Volunteers over the past 50 years. The submitted material will be used as a part of celebrations of Peace Corps' 50th anniversary in 2011. When Returned Peace Corps Volunteers and other members of the public submit stories and/or pictures, Peace Corps will request information identifying the submitter, his or her rights to the material submitted, a non-exclusive license for Peace Corps to use the

material, contact information of the submitter, and information regarding the submitter's Peace Corps service, if any. Although submission of stories and pictures is voluntary, submitters will be required to fill out the forms for which Peace Corps is seeking approval.

DATES: Submit comments on or before September 2, 2008.

ADDRESSES: Comments should be addressed to Stacia Clifton, Office of Communications, Peace Corps, 1111 20th Street, NW., Washington, DC 20526. Ms. Clifton can be contacted by telephone at 202–692–2234 or e-mail at *archive@peacecorps.gov*. E-mail comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Stacia Clifton, Office of Communications, Peace Corps, 1111 20th Street, NW., Washington, DC 20526.

SUPPLEMENTARY INFORMATION:

Title: 50th Anniversary Archive Submission Form.

OMB Control Number: To be assigned.

Type of Request: New Collection of Information.

Abstract: The Peace Corps is collecting contact information, stories, and photos related to Peace Corps service from Returned Peace Corps Volunteers. Submissions will be received electronically or by hardcopy. Each submitter will be asked for his or her name, name at time of service (if different from present), address, telephone number, e-mail address, country of service, service years, confirmation of the submitter's ownership of the material, a non-exclusive license for Peace Corps to use the material, and basic descriptive information about the submissions such as document format, subjects and keywords. The information will be used in informational and promotional articles, exhibits and events celebrating the history of the Peace Corps.

Affected Public: Returned Peace Corps Volunteers and other members of the public with Peace Corps Volunteer stories or pictures.

Burden on the Public:

a. Annual reporting burden: 750 hours.

b. Estimated average burden per response: 15 minutes.

c. Frequency of response: Once.

e. Estimated number of likely respondents: 3000.

f. Estimated cost to respondents: $0.00/$0.00.

Dated: June 26, 2008.

Wilbert Bryant,

Associate Director for Management, Peace Corps.

[FR Doc. E8–15011 Filed 7–1–08; 8:45 am]

BILLING CODE 6051–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549.

Extension: Rule 203A–2; SEC File No. 270–501; OMB Control No. 3235–0559.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

Rule 203A–2(f),[1] which is entitled ''Internet Investment Advisers,'' exempts from the prohibition on Commission registration an Internet investment adviser who provides investment advice to all of its clients exclusively through computer software-based models or applications, termed under the rule as ''interactive Web sites.'' These advisers generally would not meet the statutory thresholds set out in section 203A of the Advisers Act [2]—they do not manage $25 million or more in assets and do not advise registered investment companies. Eligibility under rule 203A–2(f) is conditioned on an adviser maintaining in an easily accessible place, for a period of not less than five years from the filing of Form ADV relying on the rule,[3] a record demonstrating that the adviser's advisory business has been conducted through an interactive Web site in accordance with the rule.[4]

This record maintenance requirement is a ''collection of information'' for PRA purposes. The Commission believes that approximately 39 advisers are registered with the Commission under rule 203–2A(f), which involves a recordkeeping requirement manifesting in approximately four burden hours per year per adviser and results in an estimated 156 of total burden hours (4 × 39) for all advisers.

This collection of information is mandatory, as it is used by Commission staff in its examination and oversight program in order to determine continued Commission registration eligibility for advisers registered under this rule. Responses generally are kept confidential pursuant to section 210(b) of the Advisers Act.[5] Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: June 25, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14982 Filed 7–1–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

[1] 17 CFR 275.203A–2(f). Included in rule 203A–2(f) is a limited exception to the interactive Web site requirement which allows these advisers to provide investment advice to no more than 14 clients through other means on an annual basis. 17 CFR 275.203A–2(f)(1)(i). The rule also precludes advisers in a control relationship with the SEC-registered Internet adviser from registering with the Commission under the common control exemption provided by rule 203A–2(c) (17 CFR 275.203A–2(c)). 17 CFR 275.203A–2(f)(1)(iii).

[2] 15 U.S.C. 80b–3a(a).

[3] The five-year record retention period is the same recordkeeping retention period for all advisers imposed under rule 204–2 of the Adviser Act. See rule 204–2 (17 CFR 275.204–2).

[4] 17 CFR 275.203A–2(f)(1)(ii).

[5] 15 U.S.C. 80b–10(b).

Extension: Form N–17D–1, SEC File No. 270–231, OMB Control No. 3235–0229.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

Section 17(d) (15 U.S.C. 80a–17(d)) of the Investment Company Act of 1940 (''Act'') authorizes the Commission to adopt rules that protect funds and their security holders from overreaching by affiliated persons when the fund and the affiliated person participate in any joint enterprise or other joint arrangement or profit-sharing plan. Rule 17d–1 under the Act (17 CFR 270.17d–1) prohibits funds and their affiliated persons from participating in a joint enterprise, unless an application regarding the transaction has been filed with and approved by the Commission. Paragraph (d)(3) of the rule provides an exemption from this requirement for any loan or advance of credit to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of the foregoing (''investments'') made by a small business investment company (''SBIC'') and an affiliated bank, provided that reports about the investments are made on forms the Commission may prescribe. Rule 17d–2 (17 CFR 270.17d–2) designates Form N–17D–1 (17 CFR 274.00) (''form'') as the form for reports required by rule 17d–1(3).

SBICs and their affiliated banks use form N–17D–1 to report any contemporaneous investments in a small business concern. The form provides shareholders and persons seeking to make an informed decision about investing in an SBIC an opportunity to learn about transactions of the SBIC that have the potential for self dealing and other forms of overreaching by affiliated persons at the expense of shareholders.

Form N–17D–1 requires SBICs and their affiliated banks to report identifying information about the small business concern and the affiliated bank. The report must include, among other things, the SBIC's and affiliated bank's outstanding investments in the small business concern, the use of the proceeds of the investments made during the reporting period, any changes in the nature and amount of the affiliated bank's investment, the name of any affiliated person of the SBIC or the affiliated bank (or any affiliated person of the affiliated person of the SBIC or the affiliated bank) who has any interest in the transactions, the basis of the affiliation, the nature of the interest, and the consideration the affiliated person has received or will receive.

Up to five SBICs may file the form in any year.[1] The Commission estimates the burden of filling out the form is approximately one hour per response and would likely be completed by an accountant or other professional. Based on past filings, the Commission estimates that no more than one SBIC is likely to use the form each year. Most of the information requested on the form should be readily available to the SBIC or the affiliated bank in records kept in the ordinary course of business, or with respect to the SBIC, pursuant to the recordkeeping requirements under the Act. Commission staff estimates that it should take approximately one hour for an accountant or other professional to complete the form.[2] The estimated total annual burden of filling out the form is 1 hour, at an estimated total annual cost of $185.[3] The Commission will not keep responses on Form N–17D–1 confidential.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: June 24, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14985 Filed 7–1–08; 8:45 am]

BILLING CODE 8010–01–P

[1] As of May 22, 2008, five SBICs were registered with the Commission.

[2] This estimate of hours is based on past conversations with representatives of SBICs and accountants that have filed the form.

[3] Commission staff estimates that the annual burden would be incurred by a senior accountant with an average hourly wage rate of $185 per hour. See Securities Industry Association and Financial Markets Association, Report on Management and Professional Earnings in the Securities Industry—2007 (2007), modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form N–8b–4; SEC File No. 270–180; OMB Control No. 3235–0247.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Form N–8b–4 (17 CFR 274.14) is the form used by face-amount certificate companies to comply with the filing and disclosure requirements imposed by section 8(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(b)). Form N–8b–4 requires disclosure about the organization of a face-amount certificate company, its business and policies, its investment in securities, its certificates issued, the personnel and affiliated persons of the depositor, the distribution and redemption of securities, and financial statements. The Commission uses the information provided in the collection of information to determine compliance with section 8(b) of the Investment Company Act of 1940.

Based on the Commission's industry statistics, the Commission estimates that there would be approximately 1 annual filing on Form N–8b–4. The Commission estimates that each registrant filing a Form N–8b–4 would

spend 171 hours in preparing and filing the Form and that the total hour burden for all Form N–8b–4 filings would be 171 hours. Estimates of the burden hours are made solely for the purposes of the PRA, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

The information provided on Form N–8b–4 is mandatory. The information provided on Form N–8b–4 will not be kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: June 24, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14986 Filed 7–1–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58020; File No. SR–ISE–2008–48]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Short Term Options Series Pilot Program

June 25, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2008, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its rules to extend the Short Term Options Series Pilot Program (''Pilot Program'') for an additional year. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 12, 2005, the Commission approved the Pilot Program that allows ISE to list and trade options series that expire one week after being opened for trading (''Short Term Options Series'').[5] Under the terms of the Pilot Program, the Exchange can select up to five options classes on which Short Term Options Series may be opened on any Short Term Options Series opening date. The Exchange also may list Short Term Options Series on any options class selected by other securities exchanges employing a similar pilot program under their respective rules.

The Pilot Program was subsequently extended[6] and the current Pilot Program is set to expire on July 12, 2008.[7] The purpose of this proposed rule change is to extend the Pilot Program for an additional year. The Exchange believes that Short Term Options Series provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities underlying options contracts. Although ISE has not listed any Short Term Options Series during the Pilot Program, there has been investor interest in trading short term options at the Chicago Board Options Exchange. For competitive reasons and in order to have the ability to respond to customer interest in Short Term Options Series, the Exchange proposes to extend its Pilot Program.

In the original proposal to establish the Pilot Program, the Exchange stated that if it were to propose an extension or an expansion of the Pilot Program, the Exchange would submit, along with any filing proposing such amendments to the Pilot Program, a report (''Pilot Program Report'') analyzing the Pilot Program, which would cover the entire period during which the Pilot Program was in effect. Since the Exchange has not listed any Short Term Options Series under the Pilot Program, there is no data available to compile such a report at this time. Therefore, the Exchange is not submitting a Pilot Program Report with this proposal.

Finally, the Exchange represents that it has the necessary systems capacity to support the listing of Short Term Options Series should it determine to do so in the future.

2. Statutory Basis

The Exchange believes that short-term options series increase the variety of listed options available to investors and provide investors with a valuable tool to manage risk exposure, minimize capital outlays and be more responsive to the timing of events affecting the securities underlying options contracts. For these reasons, the Exchange believes the proposed rule change is consistent with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 52012 (July 12, 2005), 70 FR 41246 (July 18, 2005) (SR–ISE 2005–17).

[6] *See* Securities Exchange Act Release No. 54117 (July 10, 2006), 71 FR 40564 (July 17, 2006) (SR–ISE 2006–37).

[7] *See* Securities Exchange Act Release No. 56047 (July 11, 2007), 72 FR 39106 (July 17, 2007) (SR–ISE 2007–54).

Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest and will promote competition because such waiver will allow ISE to continue the existing Pilot Program without interruption.[12] Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2008–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2008–48. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2008–48 and should be submitted on or before July 23, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14927 Filed 7–1–08; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78(f)(b).

[9] 15 U.S.C. 78(f)(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58021; File No. SR–NSX–2008–10]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NSX Rules To Provide for an Optional Limit Cap Price on Any Pegged Zero Display Reserve Order

June 25, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 2008, the National Stock Exchange (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The NSX designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend NSX Rules 11.11(c)(2) and 11.14 to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

allow ETP holders the option of submitting a limit cap price on any pegged Zero Display Reserve Order. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nsx.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NSX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Exchange Rules 11.11(c)(2) and 11.14 to allow ETP Holders the option of submitting a limit cap price on any pegged Zero Display Reserve Order. Under current Rule 11.11(c)(2), Zero Display Reserve Orders may be entered with either a limit price or with a ''peg,'' which, at the ETP Holder's discretion, is pegged to the buy-side, sell-side, or mid-point of the Protected Best Bid or Offer (''PBBO''). Under this proposal, ETP Holders would be able to enter an optional limit cap price on any pegged Zero Display Reserve Order. The cap price will prevent the pegged order from following the PBBO past the ETP Holder's specified price. A limit price may be entered, providing a ceiling price (for Buy orders) and floor price (for Sell orders). All pegged Zero Display Reserve Orders—including those that track the inside quote on the same side of the market (''Primary Peg''), the opposite side of the market (''Market Peg'') or the Midpoint—are eligible to have a limit cap price.

The methodology used to price the pegged orders will remain unchanged. However, if the pegged order upon price re-evaluation would be assigned a value that violates its limit price due to the cap, the pegged order will not be assigned that new price and will therefore not be eligible for matching. This pegged order will be re-evaluated again when a new marketable order arrives.

In addition, the limit price may be modified by entering a cancel/replace of the pegged order. In this case, a new timestamp will be applied. Rule 11.14 will be amended to reflect this priority.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[5] in general, and Section 6(b)(5) of the Act,[6] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] As required under Rule 19b–4(f)(6)(iii),[9] the NSX provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, prior to the filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to the 30th day after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NSX requested that the Commission waive the 30-day operative delay and make the proposed rule change effective and operative upon filing because the proposal is similar to a feature available on other markets and raises no new issues. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. In particular, the Commission does not believe that the rule change presents any novel issues since the inclusion of a limit cap on the Zero Display Reserve Order has been included on similar order types currently available on other markets.[12]

Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSX–2008–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2008–10. This file

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] *See id.*

[11] *Id.*

[12] *See, e.g.*, Securities Exchange Act Release Nos. 54613 (October 17, 2006), 71 FR 62325 (October 24, 2006) (SR–NASDAQ–2006–043); 51326 (March 7, 2005), 70 FR 12521 (March 14, 2005) (SR–NASD–2004–173).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2008–10 and should be submitted on or before July 23, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14928 Filed 7–1–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58024; File No. SR–NYSEArca–2008–63)

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change Relating to the Listing and Trading of Shares of the MacroShares Medical Inflation Trusts

June 25, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 13, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 8.400 (Paired Trust Shares), and to list and trade shares of the MacroShares Medical Inflation Up Trust Series 2008–1 (''Up Trust'') and the MacroShares Medical Inflation Down Trust Series 2008–1 (''Down Trust'') (collectively, the ''Trusts'') pursuant to that rule. The shares of the Up Trust are referred to as the Up MacroShares, the shares of the Down Trust are referred to as the Down MacroShares, and they are referred to collectively as the ''Shares.'' The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 8.400 (Paired Trust Shares), and to list and trade the Up MacroShares and the Down MacroShares under the rule, as proposed to be amended herein.[3] The Up MacroShares and the Down MacroShares will be offered by the Up Trust and the Down Trust, respectively, established by MACRO Inflation Depositor, LLC, as depositor, under the laws of the State of New York. The Trusts are not registered with the Commission as investment companies.[4]

a. Amendment to NYSE Arca Equities Rule 8.400

The Exchange proposes to amend NYSE Arca Equities Rule 8.400, which applies to Paired Trust Shares, to accommodate the listing and trading of Shares. In its current form, NYSE Arca Equities Rule 8.400 applies to Paired Trust Shares that consist of Holding Shares and Tradeable Shares.[5] As described in more detail below, the structure of the series of Paired Trust Shares proposed to be listed and traded on the Exchange pursuant to this proposed rule change varies from the structure of Holding Shares and Tradable Shares in that there are no Holding Trusts and there is only one set of trusts (the ''Up Trust'' and the ''Down Trust'') instead of two.

Under the proposed amendments to NYSE Arca Equities Rule 8.400(b)(1), the term ''Paired Trust Shares'' would refer to: (1) Both Holding Shares and Tradeable Shares; or (2) solely ''Trading Shares,'' which is a new defined term in NYSE Arca Equities Rule 8.400(b)(1)(B). Trading Shares would be defined similarly to Holding Shares in current NYSE Arca Equities Rule 8.400(b)(2) (proposed to be renumbered as NYSE Arca Equities Rule 8.400(b)(1)(A)(i)), except that it is not required that a majority of Trading Shares be acquired

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved for listing and trading a similar product on the American Stock Exchange. *See* Securities Exchange Act Release No. 54839 (November 29, 2006), 71 FR 70804 (December 6, 2006) (SR–Amex–2006–82) (approving listing and trading Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares). The Commission also approved this product for trading on the Exchange pursuant to unlisted trading privileges when it approved new NYSE Arca Equities Rule 8.400. *See* Securities Exchange Act Release No. 55033 (December 29, 2006), 72 FR 1253 (January 10, 2007) (SR–NYSEArca–2006–75) (approving trading Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares).

[4] The Shares are being offered by the Trusts under the Securities Act of 1933, as amended, 15 U.S.C. 77a. On January 25, 2008, the depositor filed with the Commission Amendment No. 1 to Registration Statement on Form S–1 for the Up MacroShares (File No. 333–147948) (''Up Trust Registration Statement''). The depositor will file with the Commission a Registration Statement on Form S–1 for the Down MacroShares prior to commencement of trading in the Shares on the Exchange.

[5] Holding Shares are issued by a matched pair of trusts (''Holding Trusts'') in exchange for cash, and Tradeable Shares are issued by a different pair of trusts (''Tradeable Trusts'') in exchange for the deposit of Holding Shares. These rules accommodated the structure of the Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares previously approved by the Commission. *See* note 3, *supra*.

and deposited in a related Tradeable Trust, as it is with Holding Shares, insofar as Trading Shares do not involve the deposit of Holding Shares in a Tradeable Trust. The term Trading Share would be defined as a security: (1) That is issued by either of a matched pair of trusts (''Trading Trusts'') whose respective underlying values move in opposite directions as the value of a specified Reference Price (defined in NYSE Arca Equities Rule 8.400(c)) varies from its starting level; (2) that is issued in exchange for cash; (3) the issuance proceeds of which are invested and reinvested in highly rated short-term financial instruments that mature prior to the next scheduled income distribution date for the security and that serve specified functions; (4) that represents a beneficial interest in the Trading Trust that issued it; (5) the value of which is determined by the underlying value of the related Trading Trust, which underlying value will either (a) increase as a result of an increase in the Reference Price and decrease as a result of a decrease in the Reference Price (in the case of an ''Up Trading Share'' issued by an ''Up Trading Trust'') or (b) increase as a result of a decrease in the Reference Price and decrease as the result of an increase in the Reference Price (in the case of a ''Down Trading Share'' issued by the paired ''Down Trading Trust''); (6) whose issuing Trading Trust enters into one or more settlement contracts and an income distribution agreement with the other paired Trading Trust; (7) that, when timely aggregated in a specified minimum number or amount of securities, along with a specified multiple of that number or amount of securities issued by the other paired Trading Trust, may be redeemed for a distribution of cash and/or securities on specified dates by authorized parties, and (8) that may be subject to early mandatory redemption of all Trading Shares prior to the final scheduled termination date under specified circumstances.

As a result of a recent interpretation by the staff of the Internal Revenue Service relating to the inability to interpose a grantor trust in order to utilize a certain tax reporting form, the Exchange has been notified that the need for the current two-tier trust structure set forth in NYSE Arca Equities Rule 8.400 for Paired Trust Shares is no longer necessary. The Exchange represents that there are no substantive differences between the proposed structure (a single set of Trading Trusts that issue Trading Shares and hold financial instruments) and the current two-tier structure (a set of Tradeable Trusts that issue Tradeable Shares and hold Holding Shares issued by a set of Holding Trusts that invest in financial instruments).

The Exchange proposes conforming changes in the remainder of NYSE Arca Equities Rule 8.400. Specifically, NYSE Arca Equities Rule 8.400(c) would be amended to provide that, with respect to the value of the ''Reference Price'' as defined in that rule, the mechanism that incorporates the value of the Reference Price into the value determination for the Paired Trust Shares could consist of settlement contracts and an earnings distribution agreement entered into by and between the paired Trading Trusts that issue the Trading Shares, as well as by and between the paired Holding Trusts that issue the Holding Shares.

NYSE Arca Equities Rule 8.400(d)(1)(i) would be amended to add Trading Trusts to the other entities (*i.e.,* Holding Trusts and Tradeable Trusts) for which the Exchange will establish a minimum number of Paired Trust Shares required to be outstanding at the commencement of trading. NYSE Arca Equities Rule 8.400(d)(1)(ii) would be amended to state that the Exchange will obtain a representation that the underlying value per share of each Up Trading Share and Down Trading Share (in the case of a series with Trading Shares) will be calculated daily and made available to all market participants at the same time.

NYSE Arca Equities Rule 8.400(d)(2) would be amended to state that the Exchange will remove from listing any series of Paired Trust Shares under specified circumstances. Specifically, Trading Trusts, Up Trading Shares and Down Trading Shares would be added to the existing rule for purposes of the distribution and combined market value criteria of such rule (NYSE Arca Equities Rule 8.400(d)(2)(i)).

NYSE Arca Equities Rule 8.400(d)(2)(ii), relating to calculation of the intraday value of the Reference Price, would be amended to state that, for a series of Paired Trust Shares for which the value of the Reference Price is not updated intraday, such value shall be calculated and available once each trading day. In addition, NYSE Arca Equities Rule 8.400(d)(2)(iii), relating to the availability of intraday indicative values, would be amended to add reference to Trading Shares and to provide an exception for series of Paired Trust Shares that have been approved for listing and trading by the Commission under Section 19(b)(2) of the Act[6] without the requirement than an intraday indicative value be made available as set forth in subparagraph (iii).

NYSE Arca Equities Rule 8.400(d)(2)(iv) would be amended to clarify that the provision relating to the need to file a proposed rule change pursuant to Rule 19b–4 under the Act[7] if a substitute index or other replacement benchmark is selected for the determination of the Reference Price applies to Trading Shares as well as Tradeable Shares.

The trading halts provision in NYSE Arca Rule 8.400(d) would be amended to add reference to Trading Shares. The term ''Trading Trust'' also would be added to the termination provision in NYSE Arca Equities Rule 8.400(d)(2), the trust term provision in NYSE Arca Equities Rule 8.400(d)(3), the trustee requirement provision in NYSE Arca Equities Rule 8.400(d)(4)(i), and the voting rights provision in NYSE Arca Equities Rule 8.400(d)(5).

NYSE Arca Equities Rule 8.400(f) (Limitation of Corporation Liability) would be amended to substitute ''trusts'' for ''Holding Trusts'' in the provision relating to underlying values of the trusts, in order to encompass Tradeable Trusts.

b. Description of the Shares and the Trusts

The Up Trust and the Down Trust intend to issue Up MacroShares and Down MacroShares, respectively, on a continuous basis at the direction of authorized participants, as described in more detail below. The Up MacroShares and the Down MacroShares represent undivided beneficial interests in the Up Trust and the Down Trust, respectively.

The assets of each Trust will consist of an income distribution agreement and settlement contracts entered into with the other Trust.[8] Under the income distribution agreement, as of any distribution date, each Trust will either: (1) Be required to pay a portion of its available income to the other Trust; or (2) be entitled to receive all or a portion of the other Trust's available income, based, in each case, on the Applicable Reference Value of Medical Inflation (the ''Applicable Reference Value,'' as defined below) for each day during the preceding calculation period. Under each settlement contract, in connection with the final scheduled termination date, an early termination date or any redemption date, each Trust will either: (1) Be required to make a final payment

[6] 15 U.S.C. 78s(b).

[7] 17 CFR 240.19b–4.

[8] The Exchange states that the income distribution agreement and applicable settlement contracts will be attached as Exhibits to the Registration Statement.

out of its assets to the other Trust; or (2) be entitled to receive a final payment from the other Trust out of the assets of the other Trust, based, in each case, on the Applicable Reference Value for the period from the closing date through the date of redemption. Each Trust will also hold U.S. Treasuries and repurchase agreements on U.S. Treasuries to secure its obligations under the income distribution agreement and the settlement contracts.

Each Trust will make quarterly distributions of income on the treasuries and a final distribution of all assets it holds on deposit on the final scheduled termination date, an early termination date or a redemption date. Each quarterly and final distribution will be based on the value for the medical care component of the Consumer Price Index for All Urban Consumers (''CPI–U''), as calculated and published monthly by the Bureau of Labor Statistics (''BLS'') at *http://www.bls.gov*.[9] The medical care component of the CPI–U reflects inflation in the cost of medical goods and services. The Applicable Reference Value is a daily linear interpolation based on the monthly values of the medical care component of the CPI–U for the preceding two months, and is the Reference Price for purposes of NYSE Arca Equities Rule 8.400, on the basis of which quarterly and final distributions on the Up MacroShares and Down MacroShares are calculated. The Applicable Reference Value is determined for each calendar day using a formula set forth in the Up Trust Registration Statement.[10] For purposes of determining the Applicable Reference Value, following the monthly publication by the BLS, any corrections to the CPI–U values released for any calendar month will not be taken into consideration or used to recalculate the underlying value of the Shares.

c. The CPI and the ''Medical Care'' Major Group

According to the Up Trust Registration Statement, the BLS divides the CPI basket of consumer goods and services into a hierarchy of categories and a number of sub-categories. The first category is the category of the eight ''Major Groups,'' each of which is divided into sub-groups. ''Medical Care'' is one of the Major Groups. The Major Group of ''Medical Care'' represents, as of December 2006 (2003–2004 Weights) 6.23% of the total consumer items which are covered by the CPI–U. The CPI–U ''medical care aggregate index'' covers two sub-groups: (1) ''Medical Care Commodities,'' consisting of the expenditure categories of ''Prescription Drugs'' and ''Over-the-Counter Drugs and Medical Supplies,'' which are together responsible, as of December 2006 (2003–2004 Weights), for approximately 23.021% of the CPI–U medical care aggregate index; and (2) ''Medical Care Services,'' consisting of three expenditure categories: ''Professional Services,'' ''Hospital Services,'' and ''Health Insurance,'' which collectively, as of December 2006 (2003–2004 Weights), represent approximately 76.962% of the CPI–U medical care aggregate index.

The movement of the CPI medical care index is based on the average change in the prices of the sample set of entry level items selected to compose such index (*e.g.*, a prescription for a specific medicine or a visit of a specified duration to a doctor or a hospital). The ''outlets'' providing medical care, such as pharmacies, doctors' offices and hospitals, and the medical items which will be sampled in each such outlet are chosen by means of the commodities and services sampling procedure described in the Up Trust Registration Statement. The CPI data collectors select the sample items in each entry-level category by surveying respondents who purchased medical commodities and/or services in the chosen outlets. The CPI defines the transaction price for medical care items as all payments received or expected to be received from eligible payers, including both patients and insurers.

With respect to the Up Trust, if the ratio of the Applicable Reference Value on any day to the Applicable Reference Value on the closing date (the date on which the Trusts entered into an income distribution agreement) exceeds the hurdle rate (''Hurdle Rate''),[11] compounded on an annualized basis for the period from the closing date to the day of measurement,[12] the underlying value of the Up Trust on the next business day will include all of its assets plus a portion of the assets of the paired Down Trust. This portion of assets due from the Down Trust will be multiplied by the leverage factor (''Leverage Factor'').[13] Conversely, if

[9] The BLS publishes a summary of its methodology for calculating the CPI at *http://www.bls.gov/cpi/*. In addition, a manual entitled BLS Handbook of Methods, in which a chapter is dedicated to calculation methodology for the CPI, may be accessed on the BLS Web site at *http://www.bls.gov/opub/hom/pdf/homch17.pdf*. According to the Up Trust Registration Statement, the CPI is a complex mathematical construct that combines economic theory with sampling and other statistical techniques and uses data from various consumer surveys to produce a measure of average price changes for the consumption sector of the American economy. The CPI's measurement objectives and the standards according to which the BLS defines any bias in the CPI are derived from the broader framework of a hypothetical cost-of-living index. The goal of any cost-of-living index is to determine the lowest hypothetical expenditure level necessary at this month's prices to achieve the same standard of living as that attained during a base reference time period.

[10] The final distribution made on the Up MacroShares on the final scheduled termination date, an early termination date or a redemption date will be based upon the underlying value of the Up Trust: (1) In the case of the final scheduled termination date, on that final scheduled termination date; (2) in the case of an early termination date, on that early termination date; and (3) in the case of a redemption date, on the related redemption order date. Underlying value will be calculated for each business day at the beginning of that business day and will be based upon the Applicable Reference Value on the preceding day, regardless of whether that preceding day is a business day or a non-business day. The underlying value on each determination date represents the aggregate amount of the assets in the paired trusts to which the Up Trust would be entitled if the settlement contracts were settled on that date. The underlying value of the Up Trust on each determination date also represents the aggregate final distribution to which holders of the Up MacroShares would be entitled if those shares were redeemed on that date. The underlying value is calculated for each business day as follows:

The sum of the Up earned income accruals for each day that has elapsed during the current calculation period up to and including the current business day

plus

The UP investment amount on that date multiplied by the leveraged settlement factor (as defined in the Registration Statement), calculated for the day preceding the current business day.

[11] The hurdle rate has been designated as 4.50%. This rate is fixed during the term of the Trusts. The Up Trust Registration Statement provides a description for calculating a hypothetical ''per share underlying value'' for any date, which is the amount an investor would be entitled to receive as a final distribution on that date if the paired trusts were to settle the settlement contracts and the Up Trust were to make a final distribution on Up MacroShares. Because such a final distribution is hypothetical, the Up Trust Registration Statement refers to it solely for the purpose of explaining the meaning of underlying value and the terms of the income distribution agreement and the settlement contracts. The formula used to calculate underlying value is designed to compensate holders of the Up MacroShares for a rate of increase in the value of the medical care component of the Consumer Price Index that is above the designated ''hurdle rate,'' compounded for the period from the closing date to the relevant date of measurement. However, according to the Up Trust Registration Statement, the amount of this compensation is not designed to equal, in absolute terms or in any specified proportion, the increase in the price of medical goods and services and an investment in the shares will not offset such price increases but will provide only some measure of protection against them. The amount of that protection depends upon certain structural features of the transaction as well as the methodology for calculating the medical component of the CPI–U, as described in the Up Trust Registration Statement.

[12] Telephone Conversation between Michael Cavalier, Associate General Counsel, NYSE Euronext and Ronesha A. Butler, Special Counsel, Division of Trading and Markets, Commission dated June 25, 2008. Compounded Hurdle Rate is defined in the Registration Statement. *See supra* note 4.

[13] The leverage factor is 2 and will be fixed for the term of the Trusts. According to the Up Trust Registration Statement, the impact of changes in the

Continued

this ratio is less than the compounded hurdle rate, the Up Trust's underlying value will decrease, because a portion of its assets will be included in the underlying value of its paired Down Trust. This portion of assets due to the Down Trust will be doubled by the Leverage Factor.

With respect to the Down Trust, if the ratio of the Applicable Reference Value on any day to the Applicable Reference Value on the closing date (the date on which the Trusts entered into an income distribution agreement) exceeds the Hurdle Rate, compounded for the period from the closing date to the day of measurement, the underlying value of the Down Trust on the next business day will decrease, because a portion of its assets will be included in the underlying value of its paired Up Trust. This portion of assets due to the Up Trust will be multiplied by the Leverage Factor. Conversely, if this ratio is less than the compounded Hurdle Rate, the Down Trust's underlying value will increase, because a portion of the assets of the Up Trust will be included in the underlying value of the Down Trust. This portion of assets due from the Up Trust will be doubled by the Leverage Factor.

The Up MacroShares may be issued only in MacroShares Units consisting of a minimum of 50,000 Up MacroShares issued by the Up Trust and 50,000 Down MacroShares issued by the Down Trust. The Up Trust and Down Trust will issue their shares in the minimum amounts that constitute a MacroShares Unit on an ongoing basis only to persons who qualify as authorized participants at the per-share underlying value of those shares on the business day on which a creation order for the shares is delivered to and accepted by MacroMarkets LLC, the administrative agent.[14] The Shares may then be sold by authorized participants to the public at the market price prevailing at the time of any such sale.

The Up MacroShares must be redeemed together with Down MacroShares by any holder who is an authorized participant on any business day in MacroShares Units consisting of a minimum of 50,000 Up MacroShares and 50,000 Down MacroShares, at the respective per share underlying values of those shares, as measured on the applicable redemption date. Unless earlier redeemed on a redemption date or an early termination date, a final distribution will be made on the Up MacroShares on the distribution date occurring in 2018.

The Up Trust Registration Statement includes a number of hypothetical scenarios of circumstances that will impact the underlying value of an Up MacroShare and a Down MacroShare. More information regarding the Shares, the Up Trust and the Applicable Reference Value, Income Distribution, Redemption Final Distribution, Risks, Fees and Expenses, Termination Triggers, and Creation and Redemption Procedures can be found in the Up Trust Registration Statement.[15]

d. Availability of Information

At the beginning of each business day, not later than one hour prior to the commencement of trading in the Core Trading Session on the Exchange, State Street Bank and Trust Company, the trustee for the Up Trust and the Down Trust, will calculate the underlying value of the Up Trust and the Down Trust and the per share underlying value of one Up MacroShare and one Down MacroShare. The trustee will then provide such values to the administrative agent, who will post them on its Web site located at *http://www.macromarkets.com*. The trustee will base its calculation of underlying value for any business day on the administrative agent's calculation of the Applicable Reference Value for the preceding day (regardless of whether that preceding day is a business day or non-business day),[16] which it will provide to the trustee. The underlying value will be disseminated to all market participants at the same time.

An intraday indicative value will not be disseminated for the Trusts. The Reference Price (in the case of the Up Macroshares and Down Macroshares, the Applicable Reference Value) is a daily linear interpolation based on the monthly values of the medical care component of the CPI–U for the preceding two months. The Exchange believes that the Reference Price applicable to the Trusts, considered together with the current market price of Shares, will provide investors with sufficient information to approximate the amount to be received upon redemption of Shares.

Information regarding the market price and volume of the Shares will be continually available on a real-time basis throughout the day via electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of major newspapers and will be available from major market data vendors. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association high-speed line.

e. Initial and Continued Listing Criteria

NYSE Arca Equities Rule 8.400(d) sets forth initial and continued listing criteria applicable to Paired Trust Shares. A minimum of 100,000 Up MacroShares and 100,000 Down MacroShares will be required to be outstanding at the commencement of trading. In addition, the Exchange will obtain a representation on behalf of the Up Trust and the Down Trust that the underlying value per share of each Up Share and Down Share, respectively, will be calculated daily and will be made available to all market participants at the same time. The Exchange will remove from listing the Up MacroShares or the Down MacroShares under the circumstances outlined in the proposed amendments to NYSE Arca Equities Rule 8.400(d) for Trading Shares, which include:

- If, after the initial twelve-month period following the commencement of trading of the Shares, (A) the Up Trust or the Down Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Up MacroShares or Down MacroShares, respectively, for 30 or more consecutive trading days; (B) if the Up Trust or the Down Trust has fewer than 50,000 Up MacroShares or Down MacroShares, respectively, issued and outstanding; or (C) if the combined market value of all Shares issued and outstanding for the Up Trust and the Down Trust combined is less than $1,000,000;
- If a replacement benchmark is selected for the determination of the Applicable Reference Value, unless the Exchange files with the Commission a related proposed rule change pursuant

Applicable Reference Value is multiplied by the leverage factor. The medical inflation ratio of the Applicable Reference Value on a certain day to the Applicable Reference Value on the closing day, divided by the compounded hurdle rate, will yield a settlement factor by which the assets held on deposit by the Up Trust must be multiplied in order to determine the Trust's underlying value. Before being so applied, this settlement factor is first adjusted by a leverage factor, (*i.e.*, 2). The effect of this is to double any increase in the underlying value of the Up Trust as well as to double any decline in that underlying value, making the per-share underlying value and the market price of an investor's Up MacroShares potentially more volatile than the value of medical inflation which those shares reference.

[14] Authorized participants must also pay a transaction fee of $2,000 for any paired redemption or issuance and, for any paired issuance directed prior to July 1, 2008, a fee equal to 3.00% of the aggregate par amount of paired shares being created.

[15] *See supra* note 4.

[16] The daily value of the Applicable Reference Value on the preceding day will be based upon the value of the medical component of the CPI–U that was calculated and published by the BLS for the second and third preceding calendar months.

to Rule 19b–4 under the Act [17] seeking approval to continue trading the Up MacroShares or Down MacroShares and such rule change is approved by the Commission; or

• If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

NYSE Arca Equities Rule 8.400(d)(2) also provides that the Exchange will halt trading in the Up MacroShares or the Down MacroShares, as the case may be, if the circuit breaker parameters of NYSE Arca Equities Rule 7.12 have been reached. In exercising its discretion to halt or suspend trading in the Up MacroShares or the Down MacroShares, the Exchange may consider other factors that may be relevant.

f. Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. NYSE Arca Equities Rule 8.400(d)(2) described above sets forth circumstances under which Shares may be halted.

If the Exchange becomes aware that the underlying value per Share of each Up Share and Down Share is not disseminated to all market participants at the same time, it will halt trading in the Up MacroShares or the Down MacroShares, as the case may be, until such time as the underlying value per share is available to all market participants.

g. Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

h. Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative securities products, including Paired Trust Shares, to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG.[18] In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

i. Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) What the Shares are; (2) the procedures for purchases and redemptions of Shares in MacroShares Units (and that Shares are not individually redeemable); (3) NYSE Arca Equities Rule 9.2(a),[19] which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information.

In addition, the Bulletin will reference that the Shares are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [20] that a national securities exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule amendments will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in the proposed rules are intended to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[17] 17 CFR 240.19b–4.

[18] For a list of the current members of ISG, *see http://www.isgportal.org.*

[19] NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a noninstitutional customer, the ETP Holder shall make reasonable efforts to obrain information concerning the customer's financial status, tax status, investment objectives, and any other information that the ETP Holder believes would be useful to make a recommendation. *See* Securities Exchange Act release No. 54026 (June 21, 2006), 71 FR 36850 (June 28, 2006) (SR–PCX–2005–1150).

[20] 15 U.S.C. 78f(b)(5).

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–63 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–63 and should be submitted on or before July 23, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14929 Filed 7–1–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58037; File No. SR–Amex–2008–50]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Pilot Program That Reduces the Minimum Number of Contracts Required for a FLEX Equity Option Opening Transaction in a New Series and To Modify the Minimum Value Size for an Opening Transaction in a Currently-Opened FLEX Equity Series

June 26, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 19, 2008, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Amex. The Exchange filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to establish a pilot program that reduces the minimum number of contracts required for a FLEX Equity Option opening transaction in a new series (''Pilot Program'') and to modify the minimum value size for an opening transaction in a currently-opened FLEX Equity Option series. The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com,* the Office of the Secretary, the Amex and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to initiate a year and a half long Pilot Program that would reduce the minimum value size for an opening transaction (other than FLEX Quotes responsive to a FLEX Request for Quotes (''RFQ''))[5] in any FLEX Equity Option[6] series in which there is no open interest at the time the RFQ is submitted, and to modify the minimum value size for an opening transaction in a currently-opened FLEX Equity series (other than FLEX Quotes responsive to a FLEX RFQ). The proposed amendments to the criteria for opening FLEX option transactions should provide members that use FLEX Equity Options greater flexibility in structuring the terms of such options to better comport with the particular needs of the members and their customers.

Currently, Amex Rule 903G(a)(4)(ii) sets the minimum opening transaction value size in the case of a FLEX Equity Option in a newly established series as the lesser of (i) 250 contracts or (ii) the number of contracts overlying $1 million in the underlying securities.[7]

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] FLEX Quotes responsive to a FLEX Request for Quote (''RFQ'') have different parameters that are not changed by this filing. *See* Amex Rule 903G(a)(4)(iv).

[6] FLEX Equity Options are flexible exchange-traded options contracts that overlie equity securities. FLEX Equity Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Equity Options may have a maximum term of five (5) years. *See* Amex Rule 903G(a)(2) and (4).

[7] Under this formula, an opening transaction in a FLEX Equity series in a stock priced at $40 or more would reach the $1 million limit before it would reach the contract size limit, *i.e.*, 250 contracts

Under the Pilot Program, the Exchange proposes to reduce the ''250 contracts'' component to ''150 contracts;'' the $1 million underlying value component will continue to apply unchanged.[8] The proposed Pilot Program would be similar to pilot programs that already exist at other options exchanges.[9]

Given that FLEX Equity Option transactions can occur in increments of 100 or more contracts in subsequent opening transactions,[10] the Exchange believes it is reasonable to permit the initial series opening transaction size to be 150 contracts (or $1 million in underlying value, whichever is less). The Exchange believes that the proposed reduction of the minimum value size for opening a series provides FLEX-participating members and their customers with greater flexibility in structuring the terms of FLEX Equity Options to better suit the FLEX traders' particular needs.

The Exchange notes that the opening size requirement for FLEX Equity Options was originally put in place to limit participation in FLEX Equity Options to sophisticated, high net worth investors rather than retail investors.[11] The Exchange has recently received requests from broker-dealers representing institutional clients that the minimum value size for opening transactions be reduced. In proposing the reduction of the 250 contract component to 150 contracts, the Amex (as was the case with the CBOE) is aware of the desire to continue to provide both the requisite amount of investor protection that the minimum opening size requirement was originally designed to achieve, as well as the need for market participants to have the flexibility to serve their customers' particular investment needs.[12]

The Exchange believes that modifying the minimum opening transaction value size in this way will further broaden the base of institutional investors that use FLEX Equity Options to manage their trading and investment risk, including investors that currently trade in the over-the-counter (''OTC'') market for customized options which can take on contract characteristics similar to FLEX Options but for which similar opening size restrictions do not apply. The Exchange believes that market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, enhanced efficiency in initiating and closing out positions; increased market transparency; and heightened contra-party creditworthiness due to the role of The Options Clearing Corporation as issuer and guarantor of FLEX Equity Options.

Should the Exchange desire to propose an extension, expansion, or permanent approval of the Pilot Program, the Exchange would submit, along with a filing proposing any necessary amendments to the Pilot Program, a pilot program report. The report would be submitted to the Commission at least ninety days prior to the expiration date of the one-and-a-half year Pilot Program. At a minimum, the report would provide (i) data and analysis on the open interest and trading volume in FLEX Equity Options for which series were opened with a minimum opening size of 150 to 249 contracts and less than $1 million in underlying value; and (ii) analysis on the types of investors that initiated opening FLEX Equity Options transactions (*i.e.*, institutional, high net worth, or retail, if any).[13]

The report should provide the Commission with information on whether the intended customers (institutional and high net worth) are in fact the investors utilizing the lower opening contract requirement in the FLEX Equity Options market, as well as whether the lower opening size has increased liquidity in FLEX Equity Options.[14] Based on the report's information, the Commission should be able to determine whether the Pilot Program should be extended or approved on a permanent basis, consistent with the Act.

Finally, the Exchange is also proposing to modify the minimum value size for an opening transaction in a currently-opened FLEX Equity series (other than FLEX Quotes responsive to a FLEX RFQ). Presently, Amex Rule 903G(a)(4)(iii) sets the minimum transaction value size for an opening transaction in a currently-opened series at 100 contracts. The Exchange is proposing to modify the minimum size formula to the lesser of (i) 100 contracts or (ii) the number of contracts overlying $1 million in the underlying securities. This change would only impact those FLEX Equity series in which the underlying stock is trading at more than $100.[15]

The FLEX minimum size requirements for subsequent opening transactions in a currently-opened series is higher for certain stocks priced over $100 than the minimum size needed to initially open the series in similarly priced stocks. The Exchange therefore believes that this proposal is necessary for there to be consistency between the minimum size requirements for new series and currently-opened series when the underlying stock is trading at more than $100.[16]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5)[17] in particular in that the Exchange's proposed rules are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that reducing the minimum value sizes for certain opening transactions in FLEX Equity

times the multiplier (100) times the stock price ($40) equals $1 million in underlying value. For a FLEX Equity series in a stock priced at less than $40, the 250 contract size limit applies.

[8] Under this proposed formula, an opening transaction in a FLEX Equity series in a stock priced at approximately $66.67 or more would reach the $1 million limit before it would reach the contract size limit, *i.e.*, 150 contracts times the multiplier (100) times the stock price ($66.67) equals just over $1 million in underlying value. For a FLEX Equity series in a stock priced at less than $66.67, the 150 contract size limit would apply.

[9] *See*, for example, Securities Exchange Act Release Nos. 57429 (March 4, 2008), 73 FR 13058 (March 11, 2008) (SR–CBOE–2006–36) and 57824 (May 15, 2008), 73 FR 29805 (May 22, 2008) (SR–Phlx–2008–35).

[10] Specifically, for FLEX Equity Options the minimum value size for a transaction in any currently-opened FLEX series is, as proposed, the lesser of 100 contracts or the number of contracts overlying $1 million in the underlying securities; or the lesser of 25 contracts or the remaining size in the case of a closing transaction. Additionally, the minimum value size for a FLEX Quote entered in response to a RFQ in FLEX Equity Options is the lesser of 25 contracts or the remaining size in a closing transaction. *See* Amex Rule 903G(a)(4)(iii) and (iv).

[11] The existing customer base for FLEX Options includes both institutional investors and high net worth individuals.

[12] *See supra* note 6.

[13] Telephone conference between Jeffrey P. Burns, Vice President and Associate General Counsel, Amex, and Kristie Diemer, Special Counsel, Division of Trading and Markets, Commission, on June 25, 2008.

[14] *Id.*

[15] Under this proposed formula, a transaction in a currently-opened FLEX Equity series in a stock priced at more than $100 would reach the $1 million limit before it would reach the contract size limit, *i.e.*, 100 contracts times the multiplier (100) times the stock price ($100) equals $1 million in underlying value.

[16] For example, a new FLEX Equity series in a stock trading at $110 could open with an initial transaction size of 91 contracts, *i.e.*, 91 contracts times the multiplier (100) times the stock price ($110) equals just over $1 million in underlying value. Once the series is opened, absent the proposed change, any further opening transactions would require a minimum contract size of 100 contracts, despite the fact that with the stock price of $110, this would be valued at $1.1 million, more than the value of the initial opening transaction.

[17] 15 U.S.C. 78(f)(b)(5).

Options series thereby providing FLEX-participating members and their customers greater flexibility to trade FLEX Equity Options will benefit the marketplace and market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received by the Exchange on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change immediately operative, so that the Exchange can implement the rule change, which is substantially similar to proposals recently implemented at other exchanges, without delay. The Amex believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest for competitive reasons, and because the proposal raises no new or controversial issues.

The Commission notes that the Amex proposal is substantially similar to the CBOE Pilot Program which was published for comment in the **Federal Register**. No comments were received on CBOE's proposal, and the Amex proposal raises no new or novel issues. Based on this, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[20]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2008–50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2008–50. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2008–50 and should be submitted on or before July 23, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15002 Filed 7–1–08; 8:45 am]

BILLING CODE 8010–01–P

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that Amex has satisfied the five-day pre-filing notice requirement.

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58018; File No. SR–CBOE–2008–62]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Quarterly Options Series Pilot Program Until July 10, 2009

June 25, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 12, 2008, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to extend for one year an existing pilot program (''Pilot'') under which the Exchange lists Quarterly Options Series, which are options series that expire at the close of business on the last business day of a calendar quarter. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 10, 2006, the Exchange filed with the Commission SR–CBOE–2006–65, which was effective on filing.[5] That proposed rule change allowed the Exchange to establish a pilot program in which the Exchange lists Quarterly Options Series. The Exchange subsequently extended the duration of the Pilot for one year, so that it would expire on July 10, 2008.[6] On March 3, 2008, the Commission approved a proposed rule change amending the Pilot to permit the listing of additional series and to implement a delisting policy for outlying series with no open interest.[7] The Exchange hereby proposes to extend the Pilot, as amended, for an additional year, so that it will expire on July 10, 2009. This proposal does not request any other changes to the Pilot.

In SR–CBOE–2006–65, the Exchange stated that it would submit, in connection with any proposed extension of the Pilot, a Pilot Program Report (''Report'') that would provide an analysis of the Pilot covering the entire period during which the Pilot was in effect. The Exchange further stated that the Report would include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which Quarterly Options Series were opened; (2) an assessment of the appropriateness of the option classes selected for the Pilot; (3) an assessment of the impact of the Pilot on the capacity of CBOE, OPRA, and on market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot and how CBOE addressed such problems; (5) any complaints that CBOE received during the operation of the Pilot and how CBOE addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot. In connection with SR–CBOE–2007–96, the Commission further requested that the Report include analysis of: (1) The impact of the additional series on the Exchange's market and quote capacity, and (2) the implementation and effects of the delisting policy, including the number of series eligible for delisting during the period covered by the report, the number of series actually delisted during that period (pursuant to the delisting policy or otherwise), and documentation of any customer requests to maintain Quarterly Options Series strikes that were otherwise eligible for delisting. The Exchange has submitted, under separate cover, a Report and supplement (''Supplement'') in connection with the present proposed rule change, which Report seeks confidential treatment under the Freedom of Information Act.

The Exchange represents that the Report and Supplement clearly support CBOE's belief that extension of the Pilot Program is proper.[8] Among other things, the Exchange represents that the Report and the Supplement show the strength and efficacy of the Pilot Program on the Exchange as reflected by the strong volume of Quarterly Options traded on the Exchange since the Pilot's inception in July 2006. The Exchange also represents that the Report and the Supplement establish that the Pilot Program has not created, and in the future should not create, capacity problems for the Exchange's or OPRA's systems. Moreover, the Exchange believes that the proposed extension of the Pilot Program will not have an adverse impact on capacity.

2. Statutory Basis

The Exchange believes that short-term options series increase the variety of listed options available to investors and provide investors with a valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities underlying options contracts. For these reasons, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to

[5] *See* Securities Exchange Act Release No. 54123 (July 11, 2006), 71 FR 40558, (July 17, 2006) (SR–CBOE–2006–65).

[6] *See* Securities Exchange Act Release No. 56035 (July 10, 2007), 72 FR 38851, (July 16, 2007) (SR–CBOE–2007–70).

[7] *See* Securities Exchange Act Release No. 57410 (March 3, 2008), 73 FR 12483 (March 7, 2008) (SR–CBOE–2007–96).

[8] *See* electronic mail sent June 24, 2008 from Jennifer Yeadon, Exchange, to Heidi Pilpel, Attorney, Division of Trading and Markets, Commission.

[9] 15 U.S.C. 78(f)(b).

[10] 15 U.S.C. 78(f)(b)(5).

Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest and will promote competition because such waiver will allow CBOE to continue the existing Pilot without interruption.[13] Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–CBOE–2008–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2008–62 and should be submitted on or before July 23, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14922 Filed 7–1–08; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58044; File No. SR–DTC–2008–02]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Deposits Service Guide

June 26, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 2, 2008, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change clarifies DTC's Regular Custody Services procedures regarding the handling of non-negotiable securities that require additional legal documentation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change clarifies a provision relating to Legal Deposits as set forth in the ''Regular Custody Services'' section of the DTC Deposits Service Guide (''Guide''). Specifically, DTC is amending a section of the Guide to clarify that when DTC holds non-negotiable certificates that are missing additional legal documentation, DTC will hold such certificates in its custody until: (1) The certificates are made negotiable by a subsequent document deposit or (2) the participant instructs DTC to return the certificates in a manner directed by that participant.

DTC states that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because it clarifies an existing procedure in DTC's rules relating to securities certificates held by DTC on behalf of its participants and thus promotes the safeguarding of securities which are in the custody or control of DTC or for which it is responsible.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] 15 U.S.C. 78q–1.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited or received written comments relating to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act [5] and Rule 19b–4(f)(4) [6] thereunder because the proposed rule effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of DTC or persons using the Regular Custody Services. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or

• Send an e-mail to *rule-comment@sec.gov*. Please include File No. SR–DTC–2008–02 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–DTC–2008–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. to 3 p.m. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at (*http://www.dtcc.com/legal/rule_filings/dtc/2008.php*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. DTC–2008–02 and should be submitted on or before July 23, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14984 Filed 7–1–08; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(4).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58025; File No. SR–FICC–2008–02]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Require Demand Processing for Blind-Brokered Repo Trades

June 25, 2008.

I. Introduction

On April 9, 2008, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2008–02 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On May 14, 2008, the Commission published notice of the proposed rule change to solicit comments from interested parties.[2] The Commission received no comment letters in response to the proposed rule change as filed. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

1. Background

In 2001, the Government Securities Clearing Corporation (''GSCC''), the GSD's predecessor, redesigned its comparison rules and procedures soon after the introduction of the real-time trade matching system. At that time, GSCC also moved the timing of its settlement guaranty from the point of netting to the point of comparison, which was much earlier in the day. In designing these changes, GSCC's goal was to provide straight through processing by providing for easy identification and resolution of uncompared trades intraday in order to achieve 100 percent comparison. These changes reduced risk by ensuring that more transactions were compared and guaranteed by the clearing corporation earlier in the day so that intraday credit exposure to counterparties was minimized.

As part of the redesign of the GSCC comparison rules, GSCC introduced Demand Comparison, which was a new type of comparison that was created to provide members with flexibility and control over the comparison process for trades executed via intermediaries.[3] Demand Comparison strikes a balance between ''bilateral comparison'' (the traditional form of comparison), where each member is required to submit trade data to the clearing agency in order for the clearing agency to compare the trade, and ''locked-in comparison,'' where the trade is submitted as a compared trade to the clearing agency by one side or by one intermediary.[4]

Demand Comparison entails submission of trade data by approved intermediaries (*e.g.*, brokers) called ''Demand Trade Sources.'' FICC deems a trade submitted for Demand Comparison to be compared upon FICC's receipt of the trade data from the Demand Trade Source. However, if a

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 57802 (May 8, 2008), 73 FR 27873.

[3] Securities Exchange Act Release No. 44946 (October 17, 2001), 66 FR 53816 [File No. SR–GSCC–2001–01].

[4] A Treasury auction take-down trade is a typical example of a trade submitted for Locked-In Comparison.

dealer ''does not know'' a trade submitted on its behalf by a Demand Trade Source, the dealer is able to submit a DK (*i.e.*, ''don't know'') to the GSD. The receipt of a DK by FICC causes the demand comparison trade to no longer be deemed compared. In order to effect comparison for a demand comparison trade that has been DKed, the DK must be removed. If the member that sent the DK determines that it did so erroneously, the member is able to remove the DK so that the trade is compared.[5] Modification of a DKed trade by the Demand Trade Source also removes the DK so that the trade is compared.[6] The removal of the DK and modification of a DKed trade are subject to the prescribed timeframes for Demand DK processing.

2. Proposal

FICC's current proposal is to mandate Demand Comparison for all blind-brokered repo trades that are submitted by 4 p.m. New York time. The GSD's members acting as inter-dealer brokers for repos will be designated as approved Demand Trade Sources. Members on whose behalf the brokers submit trades will not need to separately authorize the brokers as their Demand Trade Sources for GSD's purposes because GSD's rules will do so. After approval of the rule change, counterparties to blind-brokered repo trades will still need to submit their trade data as they do currently. Dealers will need to monitor the broker submissions against them in order to submit DKs where necessary to block any further processing of the submission. In order to provide the dealer counterparties with adequate time by which to submit their DKs, especially for trades submitted close to the 4 p.m. deadline, GSD will create a 30 minute DK window following the 4 p.m. Demand Comparison submission deadline (until 4:30 p.m.) during which time the dealer counterparties can DK previously received demand trades; however, dealer counterparties will be able to submit DKs at any time during the Demand Comparison submission processing timeframe. Under Demand Comparison processing, a dealer counterparty that does not submit a DK with respect to a blind-brokered repo trade submitted against it will be responsible for that trade. Blind-brokered repo trades submitted after the 4 p.m. deadline will be treated as trades submitted for ''bilateral comparison'' requiring two-sided submission and matching for comparison to occur.

FICC believes that requiring Demand Comparison for blind-brokered repo trades as described above will reduce risk by promoting earlier comparison and a higher rate of comparison. Demand Comparison trade entry will also encourage members to reconcile differences on a timely basis.

FICC plans to implement the proposed changes four months after submission of this filing to the Commission (*i.e.*, early August), subject to approval by the Commission, in order to provide members with the opportunity to make any necessary system changes.

III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[7] The Commission believes that FICC's proposed rule change is consistent with this Section because it should facilitate the prompt and accurate clearance and settlement of securities by enabling earlier comparison and a higher rate of comparison of blind-brokered repo transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder. In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation.[8]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FICC–2008–02) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14975 Filed 7–1–08; 8:45 am]

BILLING CODE 8010–01–P

[5] Under this proposal to require Demand Comparison processing of blind-brokered repo trades, the cut-off time for removing DKs will be 8 p.m. New York time.

[6] Under this proposal to require Demand Comparison processing of blind-brokered repo trades, the cut-off time for modifications by Demand Trade Sources will be 8 p.m. New York time.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58019; File No. SR–ISE–2008–49]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Quarterly Options Series Pilot Program

June 25, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2008, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend, until July 10, 2009, its quarterly options series pilot program. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend, until July 10, 2009, an ISE pilot program (the ''Quarterly Options Series Pilot Program'') to list and trade options series that expire at the close of business on the last business day of a calendar quarter (''Quarterly Options Series'').[5] The current Quarterly Options Series Pilot Program is set to expire on July 10, 2008. Under the Quarterly Options Series Pilot Program, the Exchange is allowed to open up to five (5) currently listed options classes that are either index options or options on exchange-traded funds (ETFs). The Exchange is also allowed to list Quarterly Options Series on any options class that is selected by other securities exchanges that employ a similar pilot program under their respective rules. The Exchange has selected the following five options classes to participate in the Quarterly Options Series Pilot Program: the Standard & Poor's Depositary Receipts® (SPY), Nasdaq–100® Shares (QQQQ), Diamonds® Trust Series 1 (DIA), iShares Russell 2000® Index Fund (IWM), and Select Sector SPDR®—Energy (XLE). The ISE believes the Quarterly Options Series Pilot Program has been successful and well received by its members and the investing public. Thus, the ISE proposes to extend the Pilot Program until July 10, 2009.

In support of this proposed rule change, and as required by the Quarterly Options Series Pilot Program Approval Order, the Exchange has submitted to the Commission a report (the ''Quarterly Options Series Pilot Program Report''), detailing the Exchange's experience with the Quarterly Options Series Pilot Program. Specifically, the Quarterly Options Series Pilot Program Report contains data and written analysis regarding the five options classes included in the Quarterly Options Pilot Program for the period from April 1, 2007 through March 31, 2008. The Exchange believes there is sufficient investor interest and demand to extend the Quarterly Options Series Pilot Program for another year. The Exchange further believes that the Quarterly Options Series Pilot Program has provided investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. The Exchange notes that it has not detected any material proliferation of illiquid options series resulting from the introduction of the Quarterly Options Series Pilot Program.

Finally, the Exchange represents that it has the necessary systems capacity to support new options series that result from the continued listing and trading of Quarterly Options Series.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder. Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extension of the Quarterly Options Pilot Program will result in a continuing benefit to investors, by allowing them to more closely tailor their investment decisions, and will allow the Exchange to further study investor interest in quarterly options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest and will promote competition because such waiver will allow ISE to continue the existing Quarterly Options Series Pilot Program without interruption.[9] Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[5] *See* Exchange Act Release No. 54113 (July 7, 2006); 71 FR 39694 (July 13, 2006) (SR–ISE 2006–24) (the ''Quarterly Options Series Pilot Program Approval Order''). *See also* Exchange Act Release No. 57425 (March 4, 2008); 73 FR 12783 (March 10, 2008) (SR–ISE 2008–19) (amending the Quarterly Options Series Pilot Program to permit the listing of additional series and to implement a delisting policy for outlying series with no open interest).

[6] 15 U.S.C. 78(f)(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2008–49 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2008–49. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2008–49 and should be submitted on or before July 23, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14926 Filed 7–1–08; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58029; File No. SR–NASDAQ–2008–053]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify the Definition of ''Independent Director''

June 26, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 6, 2008, The NASDAQ Stock Market LLC (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend Rule 4200(a)(15)(B) and IM–4200 to modify Nasdaq's definition of ''independent director.'' Nasdaq will implement the proposed rule upon approval.

The text of the proposed rule change is available at Nasdaq, at the Commission's Public Reference Room, and on Nasdaq's Web site at *http://nasdaq.complinet.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to modify Nasdaq's definition of an ''independent director.''

Nasdaq's rules generally preclude a director from being considered independent if the director has received more than $100,000 in compensation from the issuer.[3] When Nasdaq first adopted this rule in 1999, the threshold was $60,000, which was chosen to be consistent with the $60,000 disclosure threshold set by the Commission in Regulation S–K, Item 404.[4] In August 2006, the Commission adopted final rules raising the threshold in Regulation S–K, Item 404 from $60,000 to $120,000.[5] Following this change to the SEC's rules, Nasdaq, as an intermediate step, increased the threshold in its independence definition from $60,000 to $100,000,[6] which was consistent with the threshold in the comparable rule of the New York Stock Exchange, Inc. (''NYSE'').[7]

On June 8, 2007, NYSE amended a prior rule proposal filed with the Commission regarding changes to certain of its corporate governance requirements.[8] In the amendment, NYSE proposed increasing the threshold in its independence definition from $100,000 to $120,000. In its statement of the purpose of its proposal, NYSE explained that ''[t]his change reflects the SEC's recent amendment to the dollar threshold applicable to related party transactions that must be disclosed under Item 404 of Regulation S–K.'' [9]

Nasdaq believes that the monetary threshold in its independence definition should be consistent with the amount in Regulation S–K, Item 404. Using a consistent standard would enhance Nasdaq's ability to assess compliance with the independent director requirements because companies are required to disclose compensation in excess of $120,000, but are not necessarily required to disclose compensation between $100,000 and $120,000. Finally, Nasdaq believes that its rules and the NYSE rules should be consistent with regard to the definition

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq Rule 4200(a)(15)(B).

[4] The rule filing stated that ''* * * Nasdaq believes that a compensation threshold of $60,000 is appropriate as it corresponds to the *de minimis* threshold for disclosure of relationships that may affect the independent judgment of directors set forth in SEC Regulation S–K, Item 404.'' *See* Securities Exchange Act Release No. 41982 (October 6, 1999), 64 FR 55510 (October 13, 1999).

[5] *See* Securities Exchange Act Release No. 54302A (August 29, 2006), 71 FR 53158 (September 8, 2006).

[6] *See* Securities Exchange Act Release No. 55463 (March 13, 2007), 72 FR 13327 (March 21, 2007).

[7] *See* Section 303A.02(b)(ii) of the NYSE Listed Company Manual.

[8] *See* Amendment No. 1 to File No. SR–NYSE–2005–81.

[9] *Id.,* citing Securities Act Release No. 8732A (August 29, 2006), 71 FR 53158 (September 8, 2006).

of an independent director. As such, and given that Nasdaq's objective has always been to make its independence threshold consistent with the SEC's disclosure threshold in Regulation S–K, Item 404, Nasdaq is proposing to increase its independence threshold from $100,000 to $120,000.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and with Section 6(b)(5) of the Act,[11] in particular. Section 6(b)(5) of the Act requires, among other things, that Nasdaq's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed change is consistent with these requirements in that it will conform Nasdaq's requirement to SEC disclosure requirements and proposed NYSE rule changes, and provide a standard that is clear, straightforward, and easy for issuers to understand and apply.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2008–053 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–053. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2008–053 and should be submitted on or before July 23, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14983 Filed 7–1–08; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6283]

Culturally Significant Objects Imported for Exhibition Determinations: ''Jan Lievens: A Dutch Master Rediscovered''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Jan Lievens: A Dutch Master Rediscovered,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about October 26, 2008, until on or about January 11, 2009; and at the Milwaukee Art Museum, Milwaukee, Wisconsin, from on or about February 7, 2009, until on or about April 26, 2009; and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 24, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–15048 Filed 7–1–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6282]

Culturally Significant Objects Imported for Exhibition Determinations: ''Leonardo da Vinci: Drawings From the Biblioteca Reale in Turin''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Leonardo da Vinci: Drawings from the Biblioteca Reale in Turin'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Birmingham Museum of Art, Birmingham, Alabama, from on or about September 28, 2008, until on or about November 9, 2008; and at the Fine Arts Museums of San Francisco-Legion of Honor, San Francisco, California, from on or about November 15, 2008, until on or about January 4, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 24, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–15049 Filed 7–1–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6280]

Culturally Significant Objects Imported for Exhibition Determinations: ''Palekh-Icons to Souvenir Boxes to Icons''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Palekh-Icons to Souvenir Boxes to Icons,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Joslyn Art Museum, Omaha, NE, from on or about September 18, 2008, until on or about January 11, 2009; at the Museum of Russian Icons, Clinton, MA, from on or about February 1, 2009, to on or about June 1, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 25, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–15019 Filed 7–1–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6281]

Culturally Significant Objects Imported for Exhibition Determinations: ''Van Gogh and the Colors of the Night''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects in the exhibition: ''Van Gogh and the Colors of the Night,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, New York, NY, from on or about September 21, 2008, until on or about January 5, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 25, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–15022 Filed 7–1–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending June 20, 2008

Notice of Applications for Certificates of Public Convenience and Necessity

and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending June 20, 2008. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2008–0191.

Date Filed: June 18, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 9, 2008.

Description: Application of ABC Aerolineas, S.A. de C.V. (''ABC'') requesting a foreign air carrier permit and an exemption to authorize ABC to engage in (i) scheduled foreign air transportation of persons, property and mail to the full extent authorized by the Air Transport Services Agreement between the United States and Mexico; that is on those routes, including beyond points where applicable, on which the Government of Mexico has designated, or may hereafter designate, ABC to provide scheduled service; and (ii) charter foreign air transportation of persons, property and mail from a point or points in Mexico to a point or points in the United States, and other charter operations.

Docket Number: DOT–OST–2008–0194.

Date Filed: June 20, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 11, 2008.

Description: Application of Iberworld Airlines, S.A. (''Iberworld'') requesting a foreign air carrier permit to the full extent authorized by the Air Transport Agreement between the United States and the European Community to enable it to engage in: (i) Foreign charter air transportation of persons and property from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) foreign charter air transportation of persons and property between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) other charters; and (iv) transportation authorized by any additional route rights made available to European Community carriers in the future. Iberworld further for renewal of its existing exemption authority an amendment to such authority to the extent necessary to enable it to provide the services described above pending issuance of a foreign air carrier permit and such additional or other relief.

Docket Number: DOT–OST–1997–2255 and DOT–OST–1997–2256.

Date Filed: June 19, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 10, 2008.

Description: Application of Custom Air Transport, Inc. requesting a waiver of the revocation for dormancy provision and 45-day advance notice requirement of 14 CFR Section 204.7 and for an extension of the one-year period in order to resume operations.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E8–14987 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending June 20, 2008

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2008–0189.

Date Filed: June 17, 2008.

Parties: Members of the International Air Transport Association.

Subject: CSC/30/Meet/012/08 dated June 16, 2008; *Finally Adopted Resolutions:* 003, 608, and 657. *Intended effective date:* 01 October 2008.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E8–14992 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval of a new information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 20, 2008, vol. 73, no. 55, page 15042. This project involves the random and representative sampling of Flight Attendants currently employed by U.S. air carriers.

DATES: Please submit comments by August 1, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: National Flight Attendant Duty/Rest/Fatigue Survey.

Type of Request: Approval of a new collection.

OMB Control Number: 2120–XXXX.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 12,000 Respondents.

Frequency: This information is collected annually.

Estimated Average Burden per Response: Approximately 40 minutes per response.

Estimated Annual Burden Hours: An estimated 8,000 hours annually.

Abstract: This project involves the random and representative sampling of Flight Attendants currently employed by U.S. air carriers. The goal of this effort is to identify the type of fatigue that flight attendants experience, the frequency with which they experience fatigue, and the consequences fatigue may have on the safety of U.S. air carriers. The results obtained from this survey are intended to provide information to FAA policy makers regarding flight attendant rest and duty time.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and

sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on June 26, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–15023 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Final Environmental Impact Statement (Final EIS) for the Development and Extension of Runway 9R/27L and Other Associated Airport Projects at Fort Lauderdale-Hollywood International Airport (FLL)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and notice of 30-day public comment period.

SUMMARY: The FAA is issuing this Notice of Availability to advise the public that a Final EIS will be available for public review beginning June 27, 2008. The document was prepared pursuant to a proposal presented to the FAA by the Broward County Board of County Commissioners, the owner and operator of FLL and identified in the Final EIS as the Airport Sponsor, for environmental review.

The FAA prepared this Final EIS to analyze and disclose potential environmental impacts related to possible Federal actions at FLL. Numerous Federal actions would be necessary if airfield development were to be implemented. Proposed improvements include Runway 9R/27L development and extension and other airfield projects (see below).

The Final EIS presents the purpose and need for the proposed Federal action, analysis of reasonable alternatives, including the No Action alternative, discussion of impacts for each reasonable alternative, the selection of the FAA's Preferred Alternative, proposed mitigation, and supporting appendices.

The Airport Sponsor proposes to redevelop and expand Runway 9R/27L to an overall length of 8,000 feet and width of 150 feet (the reconstructed runway would be equipped with an Engineered Materials Arresting System (EMAS) at both runway ends); elevate Runway 9R end and Runway 27L end to provide 34.74 feet of vertical clearance over the Florida East Coast (FEC) Railway; construct a new full-length parallel taxiway 75 feet wide on the north side of Runway 9R/27L with separation of 400 feet from 9R/27L; construct an outer dual parallel taxiway that would be separated from the proposed north side parallel taxiway by 276 feet; construct connecting taxiways from the proposed full-length parallel taxiway to existing taxiways; construct a Category I Instrument Landing System (ILS) for landings on Runways 9R and 27L that includes a Medium Intensity Approach Light System with runway alignment indicator lights (MALSR), localizer, and glideslope. The Airport Sponsor also proposes to decommission Runway 13/31 and redevelop and expand terminal gate facilities.

Connected actions associated with the Airport Sponsor's Proposed Project include closing Airport Perimeter Road located within the approach to Runway 9R; relocate ASR–9; acquire all, or a portion, of the Hilton Fort Lauderdale Airport Hotel (formerly Wyndham Fort Lauderdale Airport Hotel) and the Dania Boat Sales to the extent existing structures are within the Proposed Runway Protection Zone (RPZ) for extended Runway 9R/27L.

Public Comment: The public comment period on the Final EIS starts June 27, 2008 and closes on July 28, 2008.

Comments can only be accepted with the full name and address of the individual commenting. Mail and fax comments are to be submitted to Ms. Virginia Lane of the FAA, at the address shown in **FOR FURTHER INFORMATION CONTACT**. All comments must be postmarked or faxed no later than midnight, Monday, July 28, 2008. The Final EIS may be reviewed for comment during regular business hours at the following locations:

1. Broward County Governmental Center, 115 S. Andrews Avenue, Fort Lauderdale, FL 33301 (Telephone: 954–357–7000)

2. Broward County Library—Main Branch, 100 S. Andrews Avenue, Fort Lauderdale, FL 33301 (Telephone: 954–354–7444)

3. Broward County Library—Fort Lauderdale Branch, 1300 E. Sunrise Boulevard, Fort Lauderdale, FL 33304 (Telephone: 954–765–4263)

4. Broward County Library—Hollywood Branch, 2600 Hollywood Boulevard, Hollywood, FL 33020 (Telephone: 954–926–2430)

5. Broward County Library—Dania Beach Paul DeMaio Branch, 255 E. Dania Beach Boulevard, Dania Beach, FL 33004 (Telephone: 954–926–2420)

6. Broward County Library—Davie/Cooper City Branch, 4600 SW 82nd Avenue, Davie, FL 33328 (Telephone: 954–680–0050)

7. Broward County Library—Lauderhill Towne Centre, 6399 W. Oakland Park Boulevard, Lauderhill, FL 33313 (Telephone: 954–497–1630)

8. Broward County Library—Stirling Road Branch, 3151 Stirling Road, Hollywood, FL 33021 (Telephone: 954–985–2689)

9. Broward County Library—Pembroke Pines/Walter C. Young Branch, 955 NW 129th Avenue, Pembroke Pines, FL 33025 (Telephone: 954–437–2635)

10. Broward County Library—West Regional Branch, 8601 W. Broward Boulevard, Plantation, FL 33324 (Telephone: 954–831–3300)

11. Broward County Library—Sunrise Dan Pearl Branch, 10500 W. Oakland Park Boulevard, Sunrise, FL 33351 (Telephone: 954–749–2521)

12. Fort Lauderdale-Hollywood International Airport, Public Outreach Trailer, Broward County Aviation Department, 550 Northwest 10th Street, Dania Beach, FL 33315 (Telephone: 954–359–6977)

13. Broward County Administration Office, Broward County Governmental Center, 115 S. Andrews Avenue, Room 409, Fort Lauderdale, FL 33301 (Telephone: 954–357–7000)

14. Broward County Aviation Department, 100 Aviation Boulevard, Fort Lauderdale, FL 33315 (Telephone: 954–359–6199)

A CD version of the Final EIS document will also be available at the following public locations. Broward County will be providing an electronic copy of the Final EIS on the Broward County web site at *http://www.broward.org/airport/*

15. City of Lauderhill, Lauderhill City Hall, 2000 City Hall Drive, Lauderhill, FL 33313 (Telephone: 954–739–0100)

16. City of Pembroke Pines, Pembroke Pines City Hall, 10100 Pines Boulevard, Pembroke Pines, FL 33025 (Telephone: 954–431–4500)

17. City of Cooper City, Cooper City Hall, 9090 S.W. 50th Place, Cooper City, FL 33328 (Telephone: 954–434–4300)

18. City of Sunrise, 10770 W. Oakland Park Blvd., Sunrise, FL 33351 (Telephone: 954–741–2580)

19. City of Fort Lauderdale, 100 N. Andrews Avenue, Fort Lauderdale, FL 33301 (Telephone: 954–761–5000)

20. City of Plantation, Plantation City Hall, 400 N.W. 73rd Avenue, Plantation, FL 33317 (Telephone: 954–797–2221)

21. City of Hollywood, Hollywood City Hall, 2600 Hollywood Boulevard, Hollywood, FL 33020 (Telephone: 954–921–3473)

22. City of Dania Beach, Dania Beach City Hall, 100 W. Dania Beach Boulevard, Dania Beach, FL 33004 (Telephone: 954–924–3600)

23. Town of Davie, Davie Town Hall, 6591 S.W. 45th Street, Davie, FL 33314 (Telephone: 954–797–1000)

SUPPLEMENTARY INFORMATION: Comments should be as specific as possible. Comments should address the contents of the Final EIS, such as the analysis of potential environmental impacts, the adequacy of the proposed action to meet the stated need, or the merits of the various alternatives. This commenting procedure is intended to ensure that substantive comments and concerns are made available to the FAA in a timely and effective manner, so that the FAA has an opportunity to address them.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Lane, FAA Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024. *Telephone:* (407) 812–6331, *Fax:* (407) 812–6978

Issued in Orlando, Florida on June 27, 2008.

W. Dean Stringer,

Manager, FAA Orlando Airports District Office.

[FR Doc. E8–15061 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Brownsville/South Padre Island International Airport, Brownsville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Brownsville/South Padre Island International Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before August 1, 2008.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Larry Brown, Director of Aviation, at the following address: City of Brownsville, Department of Aviation, 700 South Minnesota Avenue, Brownsville, Texas 78521–5721.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650, e-mail: *Mike.Nicely@faa.gov,* fax: (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Brownsville/South Padre Island International Airport under the provisions of the AIR 21.

On June 19, 2008, the FAA determined that the request to release property at Brownsville/South Padre Island International Airport, submitted by the City, met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, 30 days from the posting of this **Federal Register** Notice.

The following is a brief overview of the request:

The City of Brownsville requests the release of 5 acres of non-aeronautical airport property. The land is part of a War Assets Administration deed of airport property to the City in 1948. The funds generated by the release will be used for upgrading, maintenance, operation and development of the airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Brownsville/South Padre Island International Airport, telephone number (956) 542–4373.

Issued in Fort Worth, Texas on June 23, 2008.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. E8–15021 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Alaska

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the U.S. Army Corps of Engineers (USACE), DoD, and other Federal Agencies.

SUMMARY: This notice announces actions taken by the USACE and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, the East Lynn Canal Highway, Alaska Route Number 7, from Echo Cove to Katz Point in the Haines and Juneau Boroughs, State of Alaska. Those actions grant a permit and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions that are covered by this notice will be barred unless the claim is filed on or before December 29, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Tim Haugh, Environmental and Right-of-Way Programs Manager, FHWA Alaska Division, P.O. Box 21648, Juneau, Alaska 99802–1648; office hours 7 a.m.–4:30 p.m. (AST), phone (907)586–7418; e-mail *Tim.Haugh@fhwa.dot.gov*. You may also contact Reuben Yost, Special Projects Manager, Alaska Department of Transportation and Public Facilities (DOT&PF), 6860 Glacier Highway, P.O. Box 112506, Juneau, Alaska 99811–2506; office hours 8am–5pm (AST), phone (907)465–1774, e-mail *Reuben.Yost@alaska.gov*.

SUPPLEMENTARY INFORMATION: On April 27, 2006, the FHWA published a ''Notice of Final Federal Agency Actions on Proposed Highway in Alaska'' in the **Federal Register** at Volume 71, Number

81 for the following project: FHWA Alaska Division Project Number STP–000S(131) titled the Juneau Access Improvements Project, involving construction of approximately 51 miles of two lane highway from the end of Glacier Highway at Echo Cove in the City and Borough of Juneau to a point two miles north of the Katzehin River in the Haines Borough. A ferry terminal will be constructed at the north end of the highway, and new shuttle ferries will be constructed to run from Haines and Skagway. Three major rivers will be bridged as well as several streams. A Final Environmental Impact Statement (FEIS) for the project was approved on January 18, 2006; the FHWA Record of Decision (ROD) was issued on April 3, 2006. Notice is hereby given that, subsequent to the earlier FHWA notice, the USACE has taken final agency actions within the meaning of 23 U.S.C. 139(I)(1) by issuing a permit and approvals for the highway project. The actions by the USACE, related final actions by other Federal agencies, and the laws under which such actions were taken, are described in the USACE decision and its administrative record for the project, referenced as POA–2006–597–2, Lynn Canal. The permit and decision document is available by contacting DOT&PF at the address above.

The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or the DOT&PF at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at *http://dot.alaska.gov/juneauaccess* or viewed at public libraries in the project area. The USACE decision can be viewed and downloaded at the same project Web site.

This notice applies to all USACE and other Federal agency decisions taken after the issuance date of the FHWA Federal Notice described above. The laws under which actions were taken, include but are not limited to:

1. Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319).

2. Rivers and Harbors Act of 1899, 33 U.S.C. 401–406.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: June 25, 2008.

David C. Miller,

Division Administrator, Juneau, Alaska.

[FR Doc. E8–14962 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplemental Environmental Impact Statement: Ketchikan, Ketchikan Gateway Borough, Alaska

AGENCY: Federal Highway Administration (FHWA), Alaska Department of Transportation and Public Facilities (DOT&PF).

ACTION: Notice of Intent.

SUMMARY: Pursuant to 40 CFR 1501.7, the Federal Highway Administration (FHWA) in cooperation with the Alaska Department of Transportation and Public Facilities (DOT&PF) is issuing this notice to advise the public that a supplemental environmental impact statement (SEIS) will be prepared for the Gravina Access Project in the Ketchikan Gateway Borough, Ketchikan, Alaska.

FOR FURTHER INFORMATION CONTACT: Michael Vanderhoof, Environmental Coordinator, Federal Highway Administration, P.O. Box 21648, Juneau, Alaska 99802, (907) 586–7464, e-mail (*Michael.vanderhoof@dot.gov*), fax (907) 586–7420; or Reuben Yost, Project Environmental Coordinator, DOT&PF, P.O. Box 2506, Juneau, AK 99811–2506, e-mail (*Reuben.Yost@alaska.gov*), fax (907–465–2030).

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the DOT&PF, will prepare a SEIS to examine ways to link Revillagigedo Island, home of Ketchikan and Saxman, to Gravina Island, the location of the Ketchikan International Airport, and adjoining lands that offer recreational and development potential. Currently, a ferry across Tongass Narrows provides the only regular access to Gravina Island. The need for improving access is threefold: to provide the Ketchikan Gateway Borough and its residents more reliable, efficient, convenient, and cost-effective access for vehicles, bicycles, and pedestrians to Borough lands and other developable or recreation lands on Gravina Island in support of the Borough's adopted land use plans; to improve the convenience and reliability of access to Ketchikan International Airport for passengers, airport tenants, emergency personnel and equipment, and shipment of freight; and to promote environmentally sound, planned long-term economic development on Gravina Island.

In August 2004, the FHWA issued a Final EIS for the Gravina Access Project (FHWA–AK–EIS–03–01–F) that identified Alternative F1: *Bridges (200-foot high East and 120-foot high West) Between South Tongass Avenue and the Airport, via Pennock Island,* as FHWA's and DOT&PF's Preferred Alternative. FHWA issued a Record of Decision on September 15, 2004, and identified Alternative F1 as the Selected Alternative. More information can be found at the project Web site: *http://dot.alaska.gov/stwdplng/projectinfo/ser/Gravina/documents.shtml.*

The DOT&PF moved forward in 2006 with the first phase of implementing Alternative F1: construction of the Gravina Island Highway segment, which extends from the Ketchikan International Airport south approximately 3 miles to the proposed bridge spanning the west channel of Tongass Narrows, and is expected to be completed in 2008. On September 21, 2007, due to rapidly escalating costs, Alaska Governor Sarah Palin directed the DOT&PF to look for a lower cost alternative for access to Gravina Island instead of proceeding further with Alternative F1. Therefore, the DOT&PF intends to re-examine alternatives and identify and select a new preferred alternative. FHWA informed the DOT&PF that if the Gravina Island Highway segment was not incorporated into any new preferred alternative that segment may be determined ineligible for federal aid. Most of the reasonable alternatives evaluated in the FEIS did not include the Gravina Island Highway. A SEIS is being prepared to consider the impacts of the Gravina Island Highway in the analysis of reasonable alternatives, to address the reduced funding levels available, and to identify a new preferred alternative.

The Gravina Access Project SEIS will build on the studies completed and previously approved by FHWA to identify a lower cost alternative for access to Gravina Island. The SEIS will examine several alternatives including: three ferry alternatives—one located north of the airport, one located near the existing ferry, and one located south of the airport; two 200-foot high bridge crossings located near the airport; two 120-foot high bridge crossings located near the airport; a bridge alternative that crosses Pennock Island with a 200-foot high bridge from Revilla Island to Pennock Island and a 120-foot high bridge from Pennock Island to Gravina Island; and a bridge alternative that crosses Pennock Island with a 60-foot high bridge from Revilla Island to

Pennock Island and a 200-foot high bridge from Pennock Island to Gravina Island. The alternatives to be studied in detail in the SEIS will be determined by a screening process after scoping is complete and any new alternatives are identified. The No Action Alternative will remain under consideration throughout the SEIS process.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments should be submitted to FHWA or DOT&PF at the addresses provided above. The deadline for submitting comments to be included in the official Scoping Summary Report is August 19, 2008. Public scoping meetings will be held in Ketchikan at the Ted Ferry Civic Center, 888 Venetia Avenue on July 22, 2008, from 11 a.m.–1 p.m. and from 5 p.m.–7 p.m.

Comments received through the scoping process will be addressed in the Draft SEIS. Public notice will be given regarding the availability of the Draft SEIS for public and agency review and comment. During the comment period on the Draft SEIS, FHWA and DOT&PF will hold a Public Hearing to receive testimony concerning the Draft SEIS.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 24, 2008.

David C. Miller,

FHWA Division Administrator, Juneau, Alaska.

[FR Doc. E8–14965 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–25290]

Commercial Driver's License Standards; Isuzu Motors America, Inc.; Exemption Renewal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to renew Isuzu Motors America, Inc.'s (Isuzu) exemption from the Agency's requirement that drivers of commercial motor vehicles (CMVs) possess a commercial driver's license (CDL) issued in the United States. Isuzu requested that its current exemption for 11 Japanese engineers and technicians be renewed to enable them to continue test driving CMVs in the U.S. All 11 individuals are employees of Isuzu and hold a valid Japanese CDL. FMCSA believes the knowledge and skills testing and training program that Japanese drivers must undergo to obtain a Japanese CDL ensures a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the U.S. requirements for a CDL.

DATES: This decision is effective July 2, 2008. Comments must be received on or before August 1, 2008.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2003–25290 by any of the following methods:

- *Web Site: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to the ground floor, room W12–140, DOT Building, New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476), or you may visit *http://docketsinfo.dot.gov.*

Public participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Schultz, Jr., FMCSA Office of Bus and Truck Standards and Operations, Driver and Carrier Operations Division, Telephone: 202–366–4325, or e-mail: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315, as referenced in section 31136(e), FMCSA may grant an exemption if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' Exemptions may be granted for up to 2 years from the approval date and may be renewed upon application (49 U.S.C. 31315(b)(1)). The procedure for requesting an exemption (including a renewal) is prescribed by 49 CFR part 381. FMCSA has evaluated Isuzu's application for renewal on its merits and has decided to grant renewal of the exemption for 11 of Isuzu's engineers and technicians for a 2-year period.

Isuzu Application for an Exemption Renewal

Isuzu Motors America, Inc. (Isuzu) has applied for the renewal of an exemption from 49 CFR 383.23, which sets forth rules applicable to drivers operating CMVs in interstate commerce. Isuzu seeks to renew its exemption for 11 of 19 drivers previously granted this exemption on October 16, 2003 (68 FR 59677). On June 21, 2006, the exemption was renewed (71 FR 35725).

Isuzu is seeking renewal of this exemption because the drivers it employs are citizens and residents of Japan, and therefore cannot apply for a CDL from a State of the United States. A copy of the request for renewal is in the docket identified at the beginning of

this notice. Renewal of the exemption will enable these 11 drivers to continue to operate CMVs as part of a team of drivers to develop, design and/or test engines for vehicles that will be manufactured, assembled, sold or primarily used in the United States.

The drivers are: Shiro Fukuda, Wataru Kumakura, Takehito Yaguchi, Tsutomu Yamazaki, Toshiya Asari, Shintaro Moroi, Masaru Otsu, Satoru Amemiya, Tsuyoshi Koyama, Nobuyuki Miyazaki, and Hiroyoshi Takahashi. These drivers are a team of Isuzu engineers and technicians who operate CMVs in the United States to test and evaluate production and prototype CMVs to be sold for use on U.S. highways. Isuzu estimates that each driver will drive approximately 5,000 miles per year on U.S. roads. The drivers have valid Japanese-issued CDLs and are experienced CMV operators. Each of the drivers satisfied strict standards in order to obtain a CDL in Japan, and each has extensive CMV training and experience. Isuzu believes that the drivers will continue to achieve a level of safety equivalent to the level of safety that would be obtained absent the exemption. Isuzu states in its application for exemption that none of these drivers received any traffic citations or was involved in any accidents from the inception of the exemption on October 16, 2003, through the date of this application for renewal.

Method To Ensure an Equivalent or Greater Level of Safety

Drivers applying to obtain a Japanese-issued CDL must successfully pass a knowledge test and a skills test before a license to operate a CMV is issued. Prior to taking the tests, drivers are required to hold a conventional driver's license for at least three years. Thus, the requirements of a Japanese-issued CDL are considered comparable to, or at least as effective as, the requirements of 49 CFR part 383. The process of licensure in Japan assesses the driver's ability to operate a CMV in a manner comparable to the process of licensure employed by States of the United States. A driver granted a Japanese CDL may legally operate any CMV permitted on the roads of Japan; there are no limits on the type or weight of vehicles that may be operated by CMV drivers.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Isuzu's request for renewal of the exemption of these 11 CMV drivers from the requirements of 49 CFR 383.23. The Agency requests that interested parties with specific data concerning the safety record of drivers listed in this notice submit comments by August 1, 2008. FMCSA will review all comments received by close of business on this date. To the extent practicable, the Agency will consider comments received in the public docket after this date. Comments will be available for examination in the docket as described in the **ADDRESSES** section of this notice.

Issued on: June 26, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–14995 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 22, 2008, and comments were due by April 22, 2008. No comments were received.

DATES: Comments must be submitted on or before August 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jean McKeever, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* 202–366–5737; or *e-mail: jean.mckeever@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Title XI Obligation Guarantees.

OMB Control Number: 2133–0018.

Type of Request: Extension of currently approved collection.

Affected Public: Individuals/businesses interested in obtaining loan guarantees for construction or reconstruction of vessels as well as businesses interested in shipyard modernization and improvements.

Forms: MA–163, MA–163A.

Abstract: In accordance with the Merchant Marine Act, 1936, MARAD is authorized to execute a full faith and credit guarantee by the United States of debt obligations issued to finance or refinance the construction or reconstruction of vessels. In addition, the program allows for financing shipyard modernization and improvement projects.

Annual Estimated Burden Hours: 280 hours.

Addressees: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC on June 26, 2008.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E8–15017 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2008–0162]

Pipeline Safety: Dynamic Riser Inspection, Maintenance, and Monitoring Records on Offshore Floating Facilities.

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: To remind owners and operators of the importance of retaining inspection, maintenance, and monitoring records for dynamic risers located on offshore floating facilities.

FOR FURTHER INFORMATION CONTACT: Elizabeth Komiskey at 202–366–3169, or by e-mail to *Elizabeth.Komiskey@dot.gov*.

SUPPLEMENTARY INFORMATION:

1. Background

A recent natural gas leak from a steel catenary export riser in the Gulf of Mexico created significant and unexpected risk, as well as major supply disruption. Though a root cause analysis of this incident is not yet complete, visual inspection by divers has determined that the source of the leak was a flexible joint on the riser. PHMSA regularly monitors pipeline incidents and operator performance nationwide and responds as incident trends necessitate, through an array of regulatory measures including advisory bulletins.

In 2004, another offshore riser flexible joint failure resulted in a small oil spill. Subsequent preemptive visual inspections performed on other steel catenary riser flexible joints in the Gulf of Mexico discovered damage to the elastomeric seal area near the rotating ball and drove the replacement of four flexible joints. The flexible joint riser failures described above have created potential safety risks on floating production facilities, and have impacted delivery of energy supplies from the Gulf of Mexico.

The national consensus standard for dynamic risers, American Petroleum Institute Recommended Practice 2RD, is currently under revision. The revised version will directly address concerns raised in this Advisory Bulletin by including guidance for integrity management of dynamic risers. PHMSA will consider adopting the revised standard into its regulations for both natural gas and hazardous liquid pipelines.

Advisory Bulletin (ABD–08–06)

To: Owners and operators of hazardous liquid and natural gas pipelines located on offshore floating facilities.

Subject: Dynamic Riser Inspection, Maintenance, and Monitoring Records on Offshore Floating Facilities.

Purpose: To remind owners and operators of the importance of retaining inspection, maintenance, and monitoring records for dynamic risers located on offshore floating facilities.

PHMSA advises operators of hazardous liquid and natural gas pipelines with dynamic risers, such as steel catenary risers on offshore floating production facilities, to perform regular inspection and maintenance of these risers, monitor nearby environmental conditions, and maintain records of these activities. Failure of a dynamic riser could significantly impact safety, the environment, and delivery of an important source of natural gas and petroleum products used in the United States. PHMSA strongly urges operators to perform the above-listed actions and any other actions needed to ensure the safe and reliable operation of these systems.

Issued in Washington, DC on June 25, 2008.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E8–14953 Filed 7–1–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 646 (Sub-No. 2)]

Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method

AGENCY: Surface Transportation Board.

ACTION: Notice.

SUMMARY: The Surface Transportation Board seeks public comments on a proposal to adjust its Revenue Shortfall Allocation Method (RSAM), which is a component of its simplified standards for reviewing the reasonableness of a challenged rail rate, in order to account for taxes.

DATES: Comments are due by August 1, 2008. Reply comments are due by September 2, 2008. Rebuttal comments are due by September 22, 2008.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should file a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 646 (Sub-No.2), 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments will be available for viewing and self-copying in the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Timothy Strafford at 202–245–0356. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The RSAM figure is one of three benchmarks that together are used to determine the reasonableness of a challenged rail rate. Each benchmark is expressed as a ratio of revenues to variable costs (R/VC ratio). RSAM is intended to measure the average markup that the railroad would need to collect from all of its ''potentially captive traffic'' (traffic with an R/VC ratio above 180%) to earn adequate revenues as measured by the Board under 49 U.S.C. 10704(a)(2) (i.e., earn a return on investment equal to the railroad industry cost of capital). The second benchmark, the $R/VC_{>180}$ benchmark, measures the average markup over variable cost currently earned by the defendant railroad on its potentially captive traffic. The third benchmark, the R/VC_{comp} benchmark, is used to compare the markup being paid by the challenged traffic to the average markup assessed on other comparable potentially captive traffic.

In *Simplified Standards for Rail Rate Cases,* STB Ex. Parte 646 (Sub-No. 1) (STB served Sept. 5, 2007) (*Simplified Standards*), the Board changed the way the RSAM benchmark is calculated to address a flaw in that calculation.[1] Under the current RSAM formula, the Board uses the confidential Carload Waybill Sample[2] to estimate the total revenues earned by the carrier on potentially captive traffic ($REV_{>180}$) and the total variable costs of the railroad to handle that traffic ($VC_{>180}$). The Board also uses the carrier's revenue shortfall (or overage) shown in the Board's annual revenue adequacy determination ($REV_{short/overage}$). RSAM is then calculated as follows:

$$RSAM = (REV_{>180} + REV_{short/overage}) \div VC_{>180}$$

In *E.I. DuPont de Nemours and Co.* v. *CSX Transportation, Inc.,* STB Docket

[1] Previously, RSAM had been calculated by computing the uniform markup above variable cost that would be needed from all potentially captive traffic ''for the carrier to recover all of its URCS fixed costs.'' *Rate Guidelines—Non-Coal Proceedings,* 1 S.T.B. 1004, 1027 (1996). When a carrier is not ''revenue adequate'' under the Board's annual calculations, its RSAM figure (what it needs to collect) should be greater than its $R/VC_{>180}$ figure (what it is actually collecting) and, conversely, when a carrier is ''revenue adequate'' its RSAM figure should be less than or equal its $R/VC_{>180}$ figure. The problem was that this relationship between RSAM and $R/VC_{>180}$ did not hold true under the Board's prior method. *See, e.g., Simplified Standards* at 19–20.

[2] The Carload Waybill Sample is a statistical sampling of railroad waybills that is collected and maintained for use by the Board and by the public (with appropriate restrictions to protect the confidentiality of individual traffic data). *See* 49 CFR 1244.

Nos. 42099, 42100, and 42101 (the DuPont cases), CSX Transportation, Inc. (CSXT) raised an issue with this RSAM formula. It observed that the revenue shortfall ($REV_{short/overage}$)—which is calculated as the difference between the return on net investment that a carrier needs to earn in order to achieve revenue adequacy and the amount that the carrier actually earns—is calculated after all taxes have been paid, and are thus stated on an ''after-tax'' basis. However, the revenues to which the revenue adequacy shortfall is added ($REV_{>180}$), are calculated before any allowance for taxes, and are thus stated on a ''pre-tax'' basis. Therefore, CSXT asserted that the inclusion of an ''after-tax'' revenue shortfall would not provide sufficient revenues to achieve adequate revenues once the additional revenues are subject to taxes.

In the DuPont cases, CSXT proposed that, to correct this deficiency, the Board change the RSAM formula adopted in *Simplified Standards* by applying the Federal statutory tax rate of 35% in conjunction with CSXT's railroad-specific state tax rate of 4.9% to convert the after-tax shortfall to a pre-tax level. But DuPont argued that no adjustment to the RSAM formula was necessary because the revenue adequacy adjustment factor is overstated. It argued that this overstatement occurs because the variable costs used to calculate the RSAM and $R/VC_{>180}$ benchmarks include an over-recovery of income taxes as measured by the Uniform Rail Costing System. This over-recovery of income taxes raises the variable costs, thereby understating the total revenue from potentially captive traffic with R/VC greater than 180% ($REV_{>180}$). Less revenue from traffic moving at R/VC greater than 180%, in turn, increases the revenue adequacy adjustment factor. Alternatively, DuPont argued that, if the Board were to adjust the RSAM formula to account for taxes, it should use an ''effective'' or ''marginal'' tax rate, rather than the statutory tax rate advocated by CSXT.

In this rulemaking, the Board seeks broader public input on whether to modify the RSAM formula adopted in *Simplified Standards* and, if so, what tax rate should be used to adjust the revenue adequacy shortfall. Commenters are asked to address the following issues. First, does the treatment of taxes in URCS make the adjustment to RSAM unnecessary, as DuPont suggested? Second, if an adjustment is appropriate, should the statutory, effective or marginal tax rate be used? Third, should the Board use the railroad's individual tax rate or an industry average tax rate? Finally, how should the appropriate tax rate be applied to calculate a pre-tax revenue shortfall? [3]

The Board seeks comments on these questions and on any other methodologies that could be used in accounting for taxes under the RSAM benchmark.

Pursuant to 5 U.S.C. 605(b), the Board certifies that the proposed action will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. No new reporting requirements will be instituted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: June 25, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–15024 Filed 7–1–08; 8:45 am]

BILLING CODE 4915–01–P

[3] In abandonment cases, the Board applies Federal and state taxes to convert the cost of capital to a pre-tax cost of capital by dividing the cost of equity by one minus the sum of the Federal and state tax rates.

Corrections

Federal Register

Vol. 73, No. 128

Wednesday, July 2, 2008

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO–P–2008–0023]

RIN 0651–AC28

Fiscal Year 2009 Changes to Patent Cooperation Treaty Transmittal and Search Fees

Correction

In proposed rule, document E8–13730 beginning on page 34672 in the issue of Wednesday, June 18, 2008, make the following correction:

1. On page 34674, in Table 1, in the second column, under the heading Fiscal year 2007 payments, in the first entry ''$54,335'' should read ''54,335''.

§ 1.445 [Corrected]

2. On page 34676, in §1.445(a)(3), in the first column ''$,225.00'' should read ''$2,225.00''.

[FR Doc. Z8–13730 Filed 7–1–08; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
July 2, 2008

Part II

Department of Justice

Office of the Attorney General; The National Guidelines for Sex Offender Registration and Notification; Notice

DEPARTMENT OF JUSTICE

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Office of the Attorney General; The National Guidelines for Sex Offender Registration and Notification

AGENCY: Department of Justice.

ACTION: Final guidelines.

SUMMARY: The United States Department of Justice is publishing Final Guidelines to interpret and implement the Sex Offender Registration and Notification Act.

DATES: *Effective Date:* July 2, 2008.

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SUPPLEMENTARY INFORMATION: Since the enactment of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (42 U.S.C. 14071) in 1994, there have been national standards for sex offender registration and notification in the United States. All states currently have sex offender registration and notification programs and have endeavored to implement the Wetterling Act standards in their existing programs.

Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109–248), the Sex Offender Registration and Notification Act (SORNA), contains a comprehensive revision of the national standards for sex offender registration and notification. The SORNA reforms are generally designed to strengthen and increase the effectiveness of sex offender registration and notification for the protection of the public, and to eliminate potential gaps and loopholes under the pre-existing standards by means of which sex offenders could attempt to evade registration requirements or the consequences of registration violations.

Section 112(b) of SORNA (42 U.S.C. 16912(b)) directs the Attorney General to issue guidelines to interpret and implement SORNA. The Department of Justice published proposed guidelines in the **Federal Register** on May 30, 2007, for this purpose. *See* 72 FR 30209 (May 30, 2007). The comment period ended on August 1, 2007.

These final guidelines provide guidance and assistance to the states and other jurisdictions in incorporating the SORNA requirements into their sex offender registration and notification programs. Matters addressed in the guidelines include general principles for SORNA implementation; the jurisdictions responsible for implementing the SORNA standards in their programs; the sex offenders required to register under SORNA and the registration and notification requirements they are subject to based on the nature of their offenses and the extent of their recidivism; the information to be included in the sex offender registries and the disclosure and sharing of such information; the jurisdictions in which sex offenders are required to register; the procedures for initially registering sex offenders and for keeping the registration current and the registration information up to date; the duration of registration; and the means of enforcing registration requirements.

A summary of the comments received on the proposed guidelines follows, including discussion of changes in the final guidelines based on the comments received, followed by the text of the final guidelines.

Summary of Comments on the Proposed Guidelines

Approximately 275 comments were received on the proposed guidelines. The Department of Justice appreciates the interest and insight reflected in the many submissions and communications, and has considered them carefully. In general, the comments did not show a need to change the overall character of the guidelines, but in some areas the commenters provided persuasive reasons to change the proposed guidelines' treatment of significant issues, or pointed to a need to provide further clarification about them.

The initial portion of this summary reviews the most significant and most common issues raised in the comments, and identifies changes made in the final guidelines relating to these issues. The remainder of the summary thereafter runs through the provisions of the guidelines in the order in which they appear, and discusses in greater detail the comments on each topical area in the guidelines and changes made (or not made) on the basis of public comments.

Tribal issues: Comments were received from a number of Indian tribal organizations and individual tribes that expressed their strong commitment to the protection of their communities from sex offenders through effective registration and notification. These comments, however, emphasized the importance of consulting and involving tribal representatives in all aspects of SORNA implementation affecting tribal interests, and presented well-founded proposals for changing a number of provisions in the guidelines. Specific changes in the final guidelines based on these comments include: (i) Clarifying that groups of tribes may enter into cooperative arrangements among themselves to effect the substantial implementation of the SORNA requirements, (ii) striking a provision of the proposed guidelines that was seen as according less respect to tribal sex offense convictions than to sex offense convictions in other jurisdictions, and (iii) modifying a requirement for sex offenders to register ethnic or tribal names whose formulation was overly broad in the proposed guidelines. The comments received on tribal issues and resulting changes in the final guidelines are further discussed below in connection with § 127 of SORNA, the meaning of ''conviction'' for purposes of SORNA, and required registration information under SORNA.

Treatment of juveniles: Comments were received from various groups and individuals objecting to SORNA's treatment of juvenile delinquents. The relevant SORNA provisions require registration for juveniles at least 14 years old who are adjudicated delinquent for committing particularly serious sexually assaultive crimes (offenses ''comparable to aggravated sexual abuse''). These comments could not be accommodated in the guidelines to the extent that they simply express disagreement with the legislative decision in SORNA § 111(8) that a narrowly defined class of juvenile delinquents should be subject to SORNA's requirements, or propose that jurisdictions be deemed to have substantially implemented SORNA even if they globally dispense with SORNA's registration and notification requirements in relation to juveniles. However, the comments have provided grounds for further thought about the implementation of § 111(8)'s requirement that juveniles at least age 14 adjudicated delinquent for offenses comparable to aggravated sexual abuse be registered, resulting in a substantial change in the final guidelines' treatment of this issue. As revised, the guidelines explain that it is sufficient for substantial implementation of this aspect of SORNA to require registration for (roughly speaking) juveniles at least age 14 who are adjudicated delinquent for offenses equivalent to rape or attempted rape, but not for those adjudicated delinquent for lesser sexual assaults or non-violent sexual conduct. The comments received on this issue

and the changes made on the basis of the comments are further discussed below in connection with the ''substantial implementation'' standard under SORNA and in connection with SORNA's concept of ''conviction'' (parts II.E and IV.A of the guidelines).

Retroactivity: Some commenters objected to, or expressed concerns about, provisions of the guidelines that require that jurisdictions apply the SORNA requirements ''retroactively'' to certain categories of offenders whose sex offense convictions predate the enactment of SORNA or its implementation in a particular jurisdiction. The guidelines specifically require registering in conformity with SORNA sex offenders who remain in the system as prisoners, supervisees, or registrants, or who reenter the system through a subsequent criminal conviction. Some comments of this type opined that Congress was simply wrong in enacting SORNA's requirements for sex offender registration and notification, and that the Attorney General should mitigate the resulting harm by defining their scope of application as narrowly as possible. This premise cannot be accepted or acted on in issuing guidelines to ''interpret and implement'' SORNA, as SORNA § 112(b) requires the Attorney General to do. Other commenters, however, expressed concerns of a more practical nature, based on potential difficulties in finding older convictions and determining whether registration is required for them under SORNA's standards. The final guidelines address this concern by clarifying that jurisdictions may rely on their normal methods and standards in searching criminal records for this purpose, and that information about underlying offense conduct or circumstances does not have to be sought beyond that appearing in available criminal history information. Parallel explanation has also been provided in relation to pre-SORNA (or pre-SORNA-implementation) convictions that raise a sex offender's tier classification under SORNA on grounds of recidivism.

Information subject to Web site posting: Some state officials who submitted comments expressed concern that their jurisdictions would be required to post various types of registration information on their public sex offender Web sites—e.g., fingerprints, palm prints, and DNA information—that would be of no real interest to the public or inappropriate for public disclosure. However, the guidelines identify a limited number of informational items concerning a sex offender that must be included on the Web sites—in essence, name information, address information, vehicle information, physical description, sex offenses for which convicted, and a current photograph—and do not require Web site posting of registration information outside of these categories. The guidelines in their final formulation have been revised for greater clarity concerning the information that must be included on jurisdictions' sex offender Web sites and the information that need not be included.

Registration jurisdictions: Some commenters raised questions about in-state registration requirements, such as whether a sex offender who resides in one county and is employed in another would have to register in both counties. The answer is that this is a matter of state discretion. The ''jurisdictions'' in which SORNA requires registration are the 50 States, the five principal territories, the District of Columbia, and Indian tribes that have elected to be registration jurisdictions in conformity with § 127—the definition does not cover counties, cities, towns, or other political subdivisions of states or other covered jurisdictions. SORNA § 113(a) provides that sex offenders must register in the jurisdictions (as so defined) in which they live, work, or attend school, but SORNA does not prescribe finer requirements as to the particular area(s) or location(s) within individual states, territories, or tribes where sex offenders must register or make in-person appearances. Questions were also raised whether there is a continuing registration requirement under SORNA—beyond initial registration—in relation to the jurisdiction in which a sex offender was originally convicted for the registration offense, if the sex offender does not reside, work, or attend school in that jurisdiction. The answer is no. While SORNA itself (§§ 111(10), 113(a)) and the proposed guidelines reflect these points, some additional explicit language has been added about them in the final guidelines to foreclose future misunderstandings of this type.

Offense of conviction versus underlying conduct: Some commenters raised questions or provided recommendations as to whether the application of SORNA's requirements depends on the elements of the offense for which the sex offender is convicted or the underlying offense conduct. The answer to this question may affect whether registration is required by SORNA at all, and may affect the ''tier'' classification of offenders under the SORNA standards. The general answer is that jurisdictions are not required by SORNA to look beyond the elements of the offense of conviction in determining registration requirements, except with respect to victim age. The discussion of the tier classifications has been edited in the final guidelines to make this point more clearly.

Duration of registration: Some commenters expressed uncertainties or criticisms relating to provisions in the guidelines affecting the duration of registration. The matters raised included (i) whether the running of the registration period is suspended by the subsequent incarceration of the sex offender or other subsequent events (tolling), and (ii) the conditions for reducing registration periods. The discussion of these issues has been revised in some respects in the final guidelines for greater clarity.

Risk assessments: Some commenters asked whether a jurisdiction could be considered to have substantially implemented the SORNA requirements if the jurisdiction globally dispensed with those requirements and instead based sex offender registration or notification on individualized risk assessments of sex offenders. The answer is no, for reasons that are further discussed in connection with ''substantial implementation'' later in this summary. This does not mean, however, that SORNA bars jurisdictions from utilizing risk assessments in their systems if they so wish. Jurisdictions may have reasons for carrying out such assessments independent of registration/notification issues, such as to inform decisions concerning the conditions or duration of supervision, and they remain free to utilize such assessments as a basis for prescribing registration or notification requirements that exceed the minimum required by SORNA. For example, there is no inconsistency with SORNA if a jurisdiction prescribes a longer registration period or more frequent verification appearances than the minimum required under SORNA §§ 111(2)–(4), 115–16, based on a risk assessment indicating that a sex offender is at ''high risk'' of reoffending, or if a jurisdiction includes on its public sex offender Web site information showing the results of risk assessments of individual offenders.

Aids to implementation: Some of the commenters recommended the development of practical information technology and documentary tools to facilitate SORNA implementation. Various measures of this sort will be pursued. The final guidelines themselves will be available in a more user-friendly form on the SMART Office Web site, which will include a table of contents with page number references

and an index. Per the directive in SORNA § 123, software is being developed and communications systems arrangements are being made that will facilitate the interjurisdictional exchange of registration information, automate the posting of information to sex offender Web sites and the operation of such Web sites in conformity with the SORNA requirements, and otherwise enable jurisdictions to implement the SORNA requirements in their programs as far as possible by using these technological tools. Additional implementation tools the SMART Office is developing include: A database of statutes ranging back to approximately 1960 for all SORNA jurisdictions, which jurisdictions will be able to link to from their registries to provide the text of the conviction offense for each registered sex offender; a statutory matrix of sex offense provisions from all SORNA jurisdictions, which will assist jurisdictions in ascertaining the SORNA registration and notification requirements applicable to offenders convicted of these offenses; checklists that jurisdictions will be able to use to evaluate whether the SORNA requirements are met in their programs and to structure their submissions to the SMART Office establishing SORNA implementation; model forms that jurisdictions will be able to use to inform sex offenders about their obligations under SORNA; and model templates for jurisdictions to use to create cooperative agreements.

Jurisdiction-specific questions: Some commenters—particularly state officials with responsibilities relating to sex offender registration or notification—submitted extensive questions, comments, and observations relating to the implementation of SORNA in their jurisdictions. This summary does not attempt to provide an exhaustive account of such submissions, or to respond to them point by point. The number of specific questions or comments of this type is very large and many of them relate to matters that may not arise in, and may not be of interest to, jurisdictions other than the particular jurisdiction that submitted the questions. Also, these comments largely did not propose changes in the guidelines, but perhaps sought confirmation of the guidelines' meaning in relation to certain matters, or practical advice or suggestions for implementing the SORNA requirements in particular state systems. The SMART Office's cooperative work with all jurisdictions in their SORNA implementation efforts will provide a more satisfactory means of answering questions and addressing matters of this type than this summary of comments on the proposed SORNA implementation guidelines.

Residency restrictions and other misunderstandings: A number of commenters submitted critical comments concerning supposed requirements that do not appear in SORNA or the guidelines. For example, some commenters complained that SORNA or the guidelines would prevent sex offenders from living in many areas. But SORNA's requirements are informational in nature and do not restrict where sex offenders can live. To the extent that states, other SORNA jurisdictions, or municipalities prescribe restrictions on areas that sex offenders may enter or reside in, it is a matter in their discretion, and any objections to such restrictions would need to be addressed to the governmental entities that adopt them. As a second example, some commenters assumed that there is little or no difference between the treatment of adult sex offenders and juveniles under SORNA and the guidelines, and that SORNA would require registration by teenagers based on consensual sexual conduct with other teenagers of similar age. No changes have been made in the guidelines on the basis of such comments because they involve incorrect assumptions concerning matters that SORNA and the guidelines do not require.

Objections to SORNA: Some of the comments stated objections to SORNA generally, to specific sex offender registration or notification requirements prescribed by SORNA, or to features of the guidelines that straightforwardly reflect SORNA's requirements. Changes have not been made in the guidelines based on such comments because the Attorney General has no authority to repeal or overrule the national standards for sex offender registration and notification that are embodied in SORNA. Rather, the Attorney General's responsibility is to interpret and implement those standards in the guidelines, as required by SORNA § 112(b).

The remainder of this summary discusses comments received on the guidelines' provisions in the order in which those provisions appear in the guidelines.

I. Introduction

No comments were received that provided any persuasive reason to change the Introduction, and it remains the same in the final guidelines.

II. General Principles

A. Terminology

The proposed guidelines, following the express definition in SORNA § 111(10), used the term ''jurisdictions'' to refer to the 50 States, the District of Columbia, the five principal U.S. territories, and Indian tribes so qualifying under § 127. Some comments received nevertheless reflected a misunderstanding of ''jurisdictions'' in some contexts in the guidelines as including political subdivisions of states (e.g., counties). Additional explanation about the meaning of ''jurisdiction'' has been added in the ''terminology'' section in the final guidelines to foreclose misunderstandings of this type. A paragraph has also been added explaining the use of the term ''imprisonment'' in SORNA and the guidelines.

B. Minimum National Standards

The proposed guidelines stated that SORNA generally establishes *minimum* national standards, setting a floor, not a ceiling, for jurisdictions' sex offender registration and notification programs. Hence, jurisdictions may adopt requirements that encompass the SORNA baseline of sex offender registration and notification requirements but exceed them in relation to such matters as: The classes of persons who will be required to register; the means by, and frequency with which, registration information will be verified; the duration of registration; the time for reporting of changes in registration information; and the classes of registrants and the information about them that will be included on public sex offender Web sites.

Some commenters took issue with this basic premise of the guidelines, asserting that SORNA was meant to prescribe the most as well as the least that jurisdictions may do, hence precluding jurisdictions from adopting sex offender registration and notification measures that go beyond those required by SORNA. This view is mistaken, as may be seen from the provisions of SORNA and the Adam Walsh Act, the history of the national standards for sex offender registration and notification, and the general principles regarding preemption of state regulation by federal law.

Considering first the provisions of SORNA, § 119(a) provides the current statutory basis for the National Sex Offender Registry (NSOR), a central database maintained by the FBI that compiles information from the state sex offender registries and makes it

available to law enforcement agencies on a nationwide basis. Section 119(a) states specifically that ''[t]he Attorney General shall maintain a national database at the Federal Bureau of Investigation for each sex offender *and any other person required to register in a jurisdiction's sex offender registry*.'' (Emphasis added.) Hence, the authorizing provision for NSOR contemplates expressly that NSOR's contents will not be limited to persons satisfying the SORNA § 111(1), (5)–(8) definition of ''sex offender''—which defines the universe of individuals required to register under SORNA's standards—but rather also will include information concerning ''other person[s]'' whom jurisdictions require to register. For example, as the guidelines note, jurisdictions may choose to require registration by certain classes of persons who are non-convicts and hence outside the SORNA definition of ''sex offender''—such as persons acquitted of sexually violent crimes or child molestation offenses on the ground of insanity, or persons released following civil commitment as sexually dangerous persons. SORNA § 119(a) explicitly confirms the propriety of including information on such registrants in NSOR. If, however, there had been a legislative objective to exclude all such persons from any requirement to register, as these commenters suppose, it would have been perverse for SORNA to provide that these persons are to be included in the National Sex Offender Registry.

SORNA § 120, which provides the statutory basis for the Dru Sjodin National Sex Offender Public Web site, similarly shows that SORNA was not intended to prescribe the maximum that jurisdictions may do. The Web site in question, maintained by the Department of Justice at *http://www.nsopr.gov*, is a search mechanism that provides convenient access through a single national site to the information available on the individual jurisdictions' public sex offender Web sites. Section 120(b) states that ''[t]he Website shall include relevant information for each sex offender *and other person* listed on a jurisdiction's Internet site.'' (Emphasis added.) Hence, the provision for the national public Web site expressly contemplates, and allows for the inclusion of, registrants in addition to those satisfying the SORNA definition of ''sex offender,'' and assumes that there will be public notification concerning such registrants through Web site posting. On the view of the commenters who assert that the SORNA standards define a ceiling for jurisdictions' programs, SORNA establishes a federal policy against registration and notification for persons who do not satisfy the SORNA definition of ''sex offender.'' However, if a jurisdiction violates this alleged federal policy by requiring such persons to register and posting them on its sex offender Web site, then the violation is to be compounded by posting them on the national sex offender Web site as well, as SORNA § 120 requires. There is no merit to an understanding that would impute to SORNA such contradictory objectives.

A third provision of similar import is 18 U.S.C. 4042(c) (entitled ''notice of sex offender release''), which requires notice to state and local law enforcement and to state or local sex offender registration agencies concerning the release to their areas of certain federal prisoners and probationers. The persons for whom such release notice is required are those ''required to register under the Sex Offender Registration and Notification Act'' and in addition ''any other person in a category specified by the Attorney General.'' 18 U.S.C. 4042(c)(1), (3), as amended by SORNA § 141(f)–(g). The ''any other person'' language provides the Attorney General the authority to facilitate jurisdictions' registration requirements that go beyond the SORNA minimum by affording release notice to the jurisdictions' registration authorities concerning persons who may be subject to such broader requirements, even if they are not required to register by the SORNA standards. This would make no sense if there were a federal policy against jurisdictions' registering individuals who are not required to register by SORNA.

A fourth provision of this type, appearing later in the Adam Walsh Act, is § 631, which authorizes funding to assist jurisdictions in periodic verification of the registered addresses of sex offenders. The history of this provision indicates that its purpose is to support special measures jurisdictions may adopt to ensure that sex offenders remain at their registered addresses, such as mailing to the registered address verification forms that the sex offender is required to sign and return—measures that are supplementary to in-person appearances by sex offenders, which are the only means of periodic verification of registration information that SORNA requires in its enacted form. *Compare* SORNA §§ 116, 631, *with* H.R. 3132, §§ 116, 118, 109th Cong., 1st Sess. (2005) (as passed by the House of Representatives). However, under the commenters' theory that SORNA defines the maximum sex offender registration measures jurisdictions may adopt, there would be no room for a program like that authorized in § 631 of the Adam Walsh Act to encourage additional measures promoting effective sex offender tracking and location.

The general history and formulation of SORNA also imply that jurisdictions have discretion to go beyond the minimum registration and notification measures required by SORNA. SORNA was preceded by the national standards for sex offender registration under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (42 U.S.C. 14071), which was initially enacted in 1994.

The general approach of SORNA parallels that of the Wetterling Act. Both enactments set forth standards that address the various aspects of sex offender tracking and public notification, but they do not purport to exhaust the measures that jurisdictions may wish to adopt for these purposes, or to preempt additional regulation by jurisdictions of persons who have committed sexual offenses. The Attorney General's guidelines under the Wetterling Act consistently interpreted that Act's requirements as minimum standards that states are free to exceed. *See* 64 FR 572, 575 (1999) (''[T]he Act's standards constitute a floor for state programs, not a ceiling * * * . For example, a state may have a registration system that covers broader classes of offenders than those identified in the Act, requires address verification for registered offenders at more frequent intervals than the Act prescribes, or requires offenders to register for a longer period of time than the period specified in the Act. Exercising these options creates no problem of compliance because the Act's provisions concerning duration of registration, covered offenders, and other matters do not limit state discretion to impose more extensive or stringent requirements that encompass the Act's baseline requirements.''); 62 FR 39009, 39013 (1997) (same); 61 FR 15110, 15112 (1996) (same); *see also* 70 FR 12721, 12724 (2005) (same understanding in proposed guidelines for final amendments to the Wetterling Act preceding enactment of SORNA).

Given that this understanding of the national standards under the Wetterling Act was set forth in public guidelines for over a decade prior to the enactment of the successor national standards of SORNA, the reasonable expectation at the time of SORNA's enactment was that the SORNA standards would be understood in the same way, absent a new legislative direction to the contrary. Hence, continuing the approach of the

Wetterling Act, SORNA does not bar jurisdictions from adopting additional regulation of sex offenders for the protection of the public, beyond the specific measures that SORNA requires.

Under both the Wetterling Act and SORNA, the ''floor, not ceiling'' principle is qualified in one area. Specifically, in relation to public disclosure of information on registrants, the Wetterling Act standards required release of relevant information necessary to protect the public, but with the proviso that ''the identity of a victim of an offense that requires registration under this section shall not be released.'' 42 U.S.C. 14071(e)(2). The exclusion of victim identity from public disclosure is carried forward in SORNA § 118(b), which specifies ''mandatory exemptions'' from the posting of registration information on jurisdictions' sex offender websites. Specifically, § 118(b)(1) states that a jurisdiction shall exempt from disclosure ''the identity of any victim of a sex offense.'' In addition, reflecting that SORNA § 114 requires a broader range of registration information than had been required under the Wetterling Act standards, some of which may be inappropriate for public disclosure through website posting, SORNA § 118(b) states additional mandatory exemptions for Social Security numbers, arrests not resulting in conviction, and any other information exempted from disclosure by the Attorney General.

The statement of these limited exceptions provides further confirmation for the general principle that SORNA's aim is to define a floor, not a ceiling, for jurisdictions' sex offender registration and notification programs. Under both the Wetterling Act and SORNA, there is one area—public disclosure of registration information—in which there is an overt legislative decision that the federal law standards should impose some affirmative limitation on how far jurisdictions may go. In both the Wetterling Act and SORNA this judgment is reflected in explicit statutory provisions stating that certain information shall not be disclosed. So a model for instructing jurisdictions about what they should *not* do exists, and one would expect similar express statements of limitation had SORNA been meant to prescribe upper bounds on jurisdictions' registration measures in other areas. In SORNA, however, as in the Wetterling Act, such statements of limitation do not appear in other contexts.

The practical consequences of reinterpreting the national standards to establish a ceiling for jurisdictions' registration and notification programs must also be considered. During the period in which the Wetterling Act defined the national baseline for sex offender registration and notification, states were free to go beyond the specified minimum, as discussed above, and commonly did so. For example, the Wetterling Act standards required 10 years of registration for sex offenders generally, and lifetime registration for aggravated offenders and recidivists. *See* 42 U.S.C. 14071(b)(6). But many jurisdictions have adopted durational requirements for registration that exceed the Wetterling Act's minimum, and may also exceed the current SORNA minimum in relation to many sex offenders—such as making lifetime registration the norm in relation to registrants generally, as may be provided in some existing registration programs. Hence, taking the SORNA standards as a ceiling for such programs would require many jurisdictions to reduce or eliminate sex offender registration and notification requirements that they were free to adopt under the Wetterling Act standards and currently apply in their programs. That is not plausibly the objective of a law (SORNA) enacted with the general purpose of strengthening sex offender registration and notification in the United States.

The general principles governing federal preemption of state regulation lead to the same conclusion. SORNA's regulatory system for sex offenders involves a combination of federal and non-federal elements. In part, SORNA directly prescribes registration requirements that sex offenders must comply with, and authorizes the Attorney General to augment or further specify those requirements in certain areas. *See* §§ 113(a)–(d), 114(a), 115(a), 116. These requirements are subject to direct federal enforcement, including prosecution under 18 U.S.C. 2250 where violations occur under circumstances supporting federal jurisdiction, and prescription of compliance with the SORNA requirements as mandatory conditions of supervision for federal sex offenders under 18 U.S.C. 3563(a)(8), 3583(d). SORNA provides incentives for states and other covered jurisdictions to incorporate its registration requirements for sex offenders, and other registration and notification-related measures set out in other provisions of SORNA, into their own sex offender registration and notification programs. *See* §§ 112(a), 113(c) (second sentence), 113(e), 114(b), 117, 118, 121, 122, 124–27. The overall SORNA scheme also incorporates federal superstructure and assistance measures that support and leverage the jurisdictions' individual registration and notification programs. *See* §§ 119, 120, 122, 123, 128, 142, 144, 146. The Attorney General is authorized to issue guidelines and regulations to interpret and implement SORNA. *See* § 112(b).

The commenters who took issue with the ''floor, not ceiling'' principle in the proposed guidelines asserted that the registration and notification requirements set out in SORNA are meant to be exhaustive and preemptive, precluding any additional regulation of released sex offenders by (non-federal) jurisdictions for the protection of the public. But ''[w]hen considering pre-emption, we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'' *Wisconsin Public Intervenor* v. *Mortier*, 501 U.S. 597, 605 (1991) (internal quotation marks omitted).

One way a ''clear and manifest'' preemptive purpose may be shown is through ''explicit pre-emptive language.'' 501 U.S. at 605. But SORNA contains no explicit preemption provision, which says that states or other jurisdictions cannot adopt regulatory measures beyond those that SORNA requires. The various provisions in SORNA regarding jurisdictions' implementation of SORNA are best understood as being satisfied if a jurisdiction incorporates the SORNA requirements in its program, with no negative implication concerning the jurisdiction's discretion to adopt additional requirements. *See* SORNA §§ 112(a) (each jurisdiction to maintain a sex offender registry conforming to the requirements of SORNA), 124 (each jurisdiction to implement SORNA within specified time frames), 125 (funding reduction for jurisdictions that fail to substantially implement SORNA), 126 (authorizing funding assistance for implementation of SORNA).

Absent explicit preemption, ''Congress' intent to supersede state law in a given area may nonetheless be implicit if a scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.'' 501 U.S. at 605 (internal quotation marks omitted). SORNA, however, obviously leaves room for states (and other jurisdictions) to supplement its requirements. As discussed above, this point is recognized in provisions of SORNA relating to its federal superstructure elements, such as the National Sex Offender Registry and the Dru Sjodin National Sex Offender Website, which expressly presuppose

that the jurisdictions' programs may go beyond the SORNA-required minimum.

Preemption may also be inferred if ''the Act of Congress * * * touch[es] a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'' 501 U.S. at 605 (internal quotation marks omitted). There is, however, no such predominant federal interest with respect to sex offender registration and notification. The interest of the individual states (and other covered jurisdictions) in the protection of their people from sex offenders through appropriate regulatory measures and public disclosure of relevant information is at least equal to that of the federal government, and falls within an area of traditional state power and responsibility.

Another ground for inferring preemption is ''if the goals sought to be obtained and the obligations imposed reveal a purpose to preclude state authority.'' 501 U.S. at 605 (internal quotation marks omitted). Here as well, SORNA does not support such an inference. The general purpose of SORNA is ''to protect the public from sex offenders and offenders against children,'' and to that end Congress in SORNA ''establish[ed] a comprehensive national system for the registration of those offenders.'' SORNA § 102. The SORNA requirements are ''comprehensive'' in the sense that SORNA provides a full set of national baseline requirements and procedures for sex offender registration and notification, replacing the previous national standards under the Wetterling Act. *See* SORNA § 129 (repeal of Wetterling Act upon completion of implementation period for SORNA). Moreover, SORNA is more comprehensive and contemplates greater uniformity among jurisdictions than the previous Wetterling Act standards in that it generally establishes a higher national baseline. But the ''comprehensive[ness]'' of the SORNA requirements cannot be understood to reflect an intent to preclude any and all differences among jurisdictions. Some provisions in SORNA expressly authorize variations among jurisdictions. *See* §§ 118(c) (discretionary exemption of certain information from website posting by jurisdictions), 125(b) (authorizing accommodation of state constitutional restrictions). Various other SORNA provisions, as discussed above, recognize that jurisdictions may go beyond the SORNA minimum and they provide for the accommodation of such differences in SORNA's federal superstructure elements, including the National Sex Offender Registry and the Dru Sjodin National Sex Offender Website. These express provisions are at odds with any understanding of the ''comprehensive[ness]'' of the SORNA standards in a preemptive sense, so as to preclude the adoption by states or other covered jurisdictions of measures that seek to go further in order to advance SORNA's basic purpose, *i.e.*, ''[i]n order to protect the public from sex offenders and offenders against children.'' SORNA § 102.

Finally, ''[e]ven when Congress has not chosen to occupy a particular field, pre-emption may occur to the extent that state and federal law actually conflict.'' 501 U.S. at 605. The comments received on the proposed guidelines included one argument along these lines, relating specifically to the provisions in SORNA § 115 concerning the duration of registration.

By way of background, subsection (a) of § 115 requires a sex offender to register ''for the full registration period * * * unless the offender is allowed a reduction under subsection (b).'' The ''full registration period[s]'' specified in subsection (a) of § 115 are 15 years for tier I sex offenders, 25 years for tier II sex offenders, and life for tier III sex offenders. Subsection (b) of § 115 in turn provides that the full registration period required by federal law shall be reduced for certain sex offenders who maintain a ''clean record'' as defined in the statute. Specifically, the ''full registration period'' specified for tier I sex offenders in subsection (a)(1) is 15 years, but if the sex offender maintains a clean record for 10 years, subsection (b) reduces by five years the period for which subsection (a) would otherwise require such a sex offender to register. The other ''clean record'' reduction of the registration period required by federal law under § 115(b) is for tier III sex offenders registered on the basis of juvenile delinquency adjudications who maintain a clean record for 25 years; no reduction is authorized for tier II sex offenders or for tier III sex offenders registered on the basis of adult convictions.

One of the commenters argued that these provisions presuppose that the ''full registration period[s]'' specified in § 115(a) are the longest registration periods SORNA allows jurisdictions to impose on sex offenders. For if a jurisdiction required lifetime registration for a tier I sex offender, the five-year reduction of the full registration period § 115(b) requires in case the sex offender maintains a ''clean record'' for 10 years could not meaningfully be applied.

However, in the context of § 115, the federal registration periods described in subsection (a) are referred to as the ''full'' registration periods to distinguish such periods from the reduced federal registration periods required under subsection (b) if certain ''clean record'' conditions are satisfied. There is no basis for taking subsection (a)'s requirement that sex offenders register for the periods specified in that subsection as implying that jurisdictions cannot prescribe longer or additional registration requirements for sex offenders. Subsection (b) of § 115 provides that the period for which SORNA requires a sex offender to register shall be reduced upon satisfaction of the ''clean record'' conditions specified in that subsection, but no inference follows that states (or other jurisdictions) lack the discretion to require on their own authority that sex offenders continue to register beyond the periods that SORNA requires them to register.

Hence, a jurisdiction has not failed to implement the SORNA requirements if it terminates registration for tier I sex offenders after they have maintained ''clean records'' for 10 years, as § 115(b) allows. But if a jurisdiction chooses instead to require longer periods of registration for such offenders, including lifetime registration, it has done nothing that SORNA prohibits. As with SORNA's requirements generally, § 115's durational requirements for registration define the minimum, and not the maximum, requirements for the jurisdictions' registration programs.

Accordingly, no change has been made in the final guidelines as to the general principle that SORNA defines a floor, not a ceiling, for jurisdictions' sex offender registration and notification programs. Changes in the final guidelines relating to this issue are limited to edits in Parts II.B and XII for greater clarity on the points reflected in the foregoing discussion.

C. Retroactivity

The proposed guidelines require the application by a jurisdiction of SORNA's requirements to sex offenders convicted prior to the enactment of SORNA or its implementation in the jurisdiction, if they remain in the system as prisoners, supervisees, or registrants, or if they reenter the system because of subsequent criminal convictions. Some commenters objected to this feature of the proposed guidelines as adversely affecting sex offenders in these classes. However, the effects of SORNA's registration and notification requirements on sex offenders are much the same regardless

of whether their sex offense convictions occurred before or after SORNA's enactment or its implementation in a particular jurisdiction. Likewise, the public safety concerns presented by sex offenders are much the same, regardless of when they were convicted. The SORNA standards reflect a legislative judgment that SORNA's registration and notification requirements, even if disagreeable from the standpoint of sex offenders who are subject to them, are justified by the resulting benefits in promoting public safety. The comments received do not establish that this legislative judgment is wrong, and in any event such a premise could not be accepted in the formulation of guidelines whose objective is to ''interpret and implement'' SORNA's standards, *see* SORNA § 112(b), not to second-guess the legislative policies they embody.

Moreover, the specific provisions of the guidelines relating to ''retroactivity'' incorporate some features that may limit their effect on sex offenders with older convictions. While SORNA's requirements apply to all sex offenders, regardless of when they were convicted, *see* 28 CFR 72.3, the guidelines do not require jurisdictions to identify and register every such sex offender. Rather, as stated in the guidelines, a jurisdiction will be considered to have substantially implemented SORNA if it applies SORNA's requirements to sex offenders who remain in the system as prisoners, supervisees, or registrants, or reenter the system through subsequent convictions. So the guidelines do not require a jurisdiction to register in conformity with SORNA sex offenders who have fully left the system and merged into the general population at the time the jurisdiction implements SORNA, if they do not reoffend. A further limitation permitted by the guidelines is that a jurisdiction may credit a sex offender with a pre-SORNA conviction with the time elapsed from his release (or the time elapsed from sentencing, in case of a nonincarcerative sentence) in determining what, if any, remaining registration time is required. To the extent that a jurisdiction exercises this option, the effect of retroactive application on sex offenders with pre-SORNA convictions may be further reduced.

Where the critical comments about the guidelines' treatment of retroactivity went beyond considerations that fail to distinguish sex offenders with pre-SORNA (or pre-SORNA-implementation) convictions from those with more recent convictions, they tended to argue that retroactive application of SORNA's requirements would be unconstitutional, or would be unfair to sex offenders who could not have anticipated the resulting applicability of SORNA's requirements at the time of their entry of a guilty plea to the predicate sex offense. However, as non-punitive regulatory measures, the SORNA requirements do not implicate the Constitution's prohibition of ex post facto laws. Moreover, fairness does not require that an offender, at the time he acknowledges his commission of the crime and pleads guilty, be able to anticipate all future regulatory measures that may be adopted in relation to persons like him for public safety purposes. The comments received provided no persuasive distinction on these points between the SORNA requirements and the sex offender registration and notification measures upheld by the Supreme Court against an ex post facto challenge in *Smith* v. *Doe,* 538 U.S. 84 (2003).

For the foregoing reasons, no changes have been made in the final guidelines relating to retroactivity based on the comments alleging an adverse effect on sex offenders. Some critical comments were also received relating to the guidelines' treatment of retroactivity based on potential practical difficulties for jurisdictions in identifying offenders in the relevant classes and determining what SORNA requires in relation to them. These comments are discussed below in connection with Part IX of the guidelines.

D. Automation—Electronic Databases and Software

Some commenters asked for a more extensive set of technological or documentary tools to facilitate the implementation of SORNA in their jurisdictions. The SMART Office is developing, and will make available to jurisdictions, a wide range of tools of this type. Descriptions of many of them appear in the initial portion of this summary, under the caption ''aids to implementation.''

E. Implementation

The final guidelines, like the proposed guidelines, explain the ''substantial implementation'' standard for jurisdictions' implementation of the SORNA requirements as affording a limited latitude to approve measures that do not exactly follow the provisions of SORNA or the guidelines, where the departure from a SORNA requirement does not substantially disserve the requirement's objective. Some commenters urged that a much broader understanding of the ''substantial implementation'' standard should be adopted, under which a jurisdiction's registration and notification system could be approved even if the jurisdiction made no effort to do (either exactly or approximately) what SORNA requires according to its terms, but rather adopted a fundamentally different approach to sex offender registration and notification generally or to particular registration or notification requirements.

In practical terms, this understanding of ''substantial implementation'' would potentially negate all of the particular legislative judgments in SORNA concerning sex offender registration and notification requirements. It would effectively treat them as a set of suggestions for furthering public safety in relation to released sex offenders, which could be dispensed with based on arguments that other approaches would further that general objective, though not encompassing the specific minimum measures that SORNA prescribes or anything close to those measures.

This reinterpretation of the substantial implementation standard has not been adopted in the final guidelines because it would defeat SORNA's objective of establishing a national baseline for sex offender registration and notification. Section 125 of SORNA illuminates this point. Subsection (a) of that section requires a reduction of Byrne Grant funding to jurisdictions that fail to ''substantially implement this title [i.e., SORNA]'' within the applicable time frame. Subsection (b) of the section recognizes, however, that there may be some instances in which a jurisdiction cannot substantially implement SORNA ''because of a demonstrated inability to implement certain provisions that would place a jurisdiction in violation of its constitution, as determined by a ruling of the jurisdiction's highest court.'' In such circumstances, the section provides that the Attorney General and the jurisdiction are to consult to verify that there is an actual conflict between the state constitution and SORNA's requirements and to determine whether any such conflict can be reconciled. If there proves to be an irreconcilable conflict, then special provision is made for such situations, as provided in § 125(b)(3): ''If the jurisdiction is unable to substantially implement this title because of a limitation imposed by the jurisdiction's constitution, the Attorney General may determine that the jurisdiction is in compliance with this Act if the jurisdiction has made, or is in the process of implementing reasonable alternative procedures or

accommodations, which are consistent with the purposes of this Act.''

Hence, § 125 distinguishes between two standards for approval of a jurisdiction's SORNA implementation efforts: (i) The generally applicable standard of ''substantial implementation,'' and (ii) a more permissive standard allowing reasonable alternative procedures or accommodations that are consistent with SORNA's purposes. The latter (more permissive) standard is applicable only to the extent that there is an irreconcilable conflict between substantial implementation of SORNA's requirements and what the jurisdiction's constitution allows.

The commenters who have urged an open-ended understanding of the ''substantial implementation'' standard would collapse the distinction drawn by § 125 between substantial implementation on the one hand and, on the other, alternative measures that do not substantially implement SORNA's requirements but aim to further its purposes in some more general way. Under § 125, the latter are allowed only if state constitutional restrictions preclude doing substantially what SORNA requires according to its terms. But under these commenters' view, alternative measures could be allowed without any particular limitation, even where a jurisdiction's constitution creates no impediment to doing what SORNA's provisions prescribe. Given the clear distinction that § 125 draws between substantial implementation of SORNA and adoption of alternative measures that are consistent with SORNA's purposes (but do not substantially implement SORNA), the commenters' view on this point cannot be reconciled with SORNA.

This point can be illustrated concretely by considering specific alternatives that some commenters have proposed. For example, some commenters have urged that ''risk-based'' approaches to sex offender registration and notification—i.e., systems in which registration or notification requirements are premised on individualized risk assessments of offenders—should be approved as substantially implementing SORNA.

The terminology utilized by the commenters on this point—distinguishing systems that incorporate SORNA's requirements from ''risk-based'' systems—is misleading, in that SORNA gives weight to various factors that are reasonably related to the risk that sex offenders may pose to others and the need for protective measures. Not all persons who have committed offenses of a sexual nature are required to register under SORNA's standards, but only those convicted for ''sex offenses'' as defined in SORNA § 111(5). The definition incorporates a number of limitations, including general exclusions of offenses involving consensual sexual conduct between adults, and of offenses involving consensual sexual conduct with minors at least 13 years old where the offender is not more than four years older. Within the universe of sex offenders who are required to register under the SORNA standards, SORNA does not prescribe registration and notification requirements indiscriminately. Rather, SORNA varies the required duration of registration, the frequency of required in-person appearances for verification, and required public notification through Web site posting, based on ''tier'' criteria that take account of such factors as the nature and seriousness of the offense, the age of the victim, and the extent of the offender's recidivism. *See* SORNA § 111(2)–(4), 115–16, 118(c)(1). SORNA also reduces the periods for which it requires sex offenders to register in certain circumstances based on criteria relating to the offender's subsequent conduct, including avoidance of further offending, successful completion of supervision, and successful completion of treatment. *See* SORNA § 115(b)(1). Moreover, given that SORNA generally defines a floor rather than a ceiling for jurisdictions' registration and notification programs, there is no inconsistency with SORNA if a jurisdiction carries out risk assessments of offenders that take into account a broader range of factors, and prescribes registration or notification requirements beyond the SORNA minimum requirements based on the results of such assessments.

These commenters' recommendation, however, is that systems should be approved as substantially implementing SORNA that do not incorporate the SORNA minimum requirements, but rather prescribe lesser registration or notification requirements (or no requirements) for sex offenders, unless they are deemed to meet some threshold or level of risk based on risk assessments that take account of factors beyond those allowed under SORNA's provisions. The grounds offered in support of this recommendation are that such systems arguably offer various benefits in comparison with SORNA's standards, such as focusing registration and notification more effectively on the offenders who are likely to pose the greatest risk to the public, and providing registrants with an incentive to follow the rules and improve their behavior, where doing so may reduce their risk scores and hence result in a reduction or termination of registration or notification.

This recommendation cannot be accepted because the systems described by such commenters do not substantially implement the SORNA requirements, and do not attempt to do so. Rather, they propose to forego implementation of what SORNA does require in favor of pursuing different approaches that the commenters view as preferable means of promoting public safety from sex offenders.

There is one circumstance in which SORNA allows the approval of such alternative measures to be considered. Suppose that the highest court of a jurisdiction rules that the jurisdiction's constitution does not permit certain registration or notification measures required by SORNA to be taken in relation to a sex offender, unless the offender is found to satisfy some threshold or level of risk based on a risk assessment that gives weight to factors that SORNA's specific provisions do not allow as grounds for waiving or reducing registration or notification requirements. In the presence of such an irreconcilable conflict with the jurisdiction's constitution, the Attorney General would be permitted under SORNA § 125(b)(3) to approve the jurisdiction's adoption of reasonable alternative procedures that are consistent with SORNA's purposes, but that incorporate reliance on risk assessments and depart from compliance with SORNA's specific requirements to the extent necessitated by the conflict. However, the commenters' recommendation is that systems going below the SORNA-required minima based on risk assessments should be allowed as ''substantial implementation'' of SORNA even where implementing SORNA according to its terms would not conflict with the jurisdiction's constitution. This recommendation cannot be accepted because it is inconsistent with the distinction that § 125 draws between substantial implementation of SORNA and reasonable alternative measures that do not substantially implement SORNA but are consistent with SORNA's purposes. Understanding ''substantial implementation'' so broadly would potentially reduce SORNA's specific standards to mere advice, and would conflict with the provisions in § 125 that specially authorize a more permissive standard only under narrowly defined circumstances involving constitutional conflicts.

The response is essentially the same to other specific alternatives that some commenters have urged as ''substantially implementing'' SORNA, such as not requiring registration by juveniles adjudicated delinquent for sex offenses under any circumstances, or making registration or notification for such delinquents a matter of judicial discretion. SORNA § 111(8) incorporates considered legislative judgments concerning the class of juvenile delinquency adjudications that are to be treated as ''convictions'' for purposes of SORNA's registration and notification requirements, a point that is discussed in greater detail below in connection with Part IV.A of the guidelines. The effect of the § 111(8) definition is that the application of SORNA's registration and notification requirements to juvenile delinquents is generally limited to those who are at least 14 years old and who are adjudicated delinquent for the most serious sexually assaultive crimes. In addition, SORNA § 115(b)(3)(B) allows the registration periods for persons required to register based on juvenile delinquency adjudications to be reduced in certain circumstances, based on their subsequent good behavior, where no corresponding reduction is allowed for offenders required to register based on adult convictions.

These commenters' proposal is in effect that a jurisdiction should be deemed to have substantially implemented SORNA with respect to the treatment of juveniles adjudicated delinquent for sex offenses if it ignores what SORNA provides on this issue, and instead does something different that the commenters believe to be better policy. As with the earlier example of ''risk assessment'' systems, there are circumstances under which SORNA would allow alternative approaches with respect to juvenile delinquents to be considered. Suppose, for example, that the highest court of a jurisdiction holds that the jurisdiction's constitution does not permit categorical registration or notification requirements for juvenile delinquents—even for the narrowly defined class of juveniles adjudicated delinquent for the most serious sexually assaultive crimes, as described in SORNA § 111(8). Rather, the court holds that the jurisdiction's constitution requires that such measures be contingent on judicial determinations that registration or notification is appropriate for particular juveniles. In the presence of such an irreconcilable conflict with the jurisdiction's constitution, the Attorney General would be permitted under SORNA § 125(b)(3) to approve the jurisdiction's adoption of reasonable alternative procedures that are consistent with SORNA's purposes, but that depart from compliance with SORNA's requirements regarding juveniles to the extent necessitated by the conflict. However, the commenters' proposal is that the same latitude should be afforded as ''substantial implementation'' of SORNA even where there is no conflict with the jurisdiction's constitution in implementing SORNA's provisions regarding juveniles according to their terms. This is not consistent with SORNA for the reasons discussed above.

For the foregoing reasons, no change has been made in the final guidelines as to the basic understanding of the substantial implementation standard. There is some limited modification in the final guidelines' explanation of this standard for greater clarity concerning the points noted in the discussion above.

III. Covered Jurisdictions

The comments received did not show a need to change the guidelines' explanation concerning the ''jurisdictions'' that are subject to SORNA's requirements, except with respect to the treatment of Indian tribes.

Section 127 of SORNA provides the standards that determine whether an Indian tribe is a registration jurisdiction for purposes of SORNA. Section 127 generally afforded tribes an election between carrying out the SORNA requirements as jurisdictions subject to its provisions, or electing to delegate the SORNA registration and notification functions to the states within which the tribes are located. The period for such elections by tribes under § 127 ended on July 27, 2007. Within that period, close to 200 tribes—the vast majority of those eligible to make an election under § 127—elected to be SORNA registration jurisdictions. Tribes that have made this election are not required to duplicate sex offender registration and notification functions that are carried out by the states in which they are located, and are free to enter into agreements with such states for the shared or cooperative discharge of these functions, as provided in § 127(b). The discussion of § 127 in the guidelines has been updated to reflect the expiration of the period for tribal elections under that provision.

As noted at the start of this summary, there are also substantive changes in the final guidelines that have been adopted on the basis of comments received from groups or associations of tribes, individual tribes, or their representatives, relating to the status or treatment of Indian tribes as SORNA jurisdictions or associated consequences. These include some changes of broad effect.

The final guidelines provide that tribes may enter into cooperative arrangements among themselves to effect the substantial implementation of the SORNA requirements. For example, a group of tribes with adjacent territories may find it helpful to enter into an agreement under which the participating tribes contribute resources and information to the extent of their capacities, but the tribal police department (or some other agency) of one of the tribes in the group has primary responsibility for the direct discharge of the various functions required for registration of sex offenders subject to the jurisdiction of any of the tribes in the group. Under such an arrangement, the responsible agency in the selected tribe might generally handle initially registering sex offenders who enter the jurisdiction of any of the tribes in the group, receiving information from those sex offenders concerning subsequent changes in residence or other registration information, and conducting periodic in-person appearances by the registrants to verify and update the registration information, as SORNA requires. Likewise, with respect to maintenance of websites providing public access to sex offender information, as required by SORNA § 118, one option for a tribe—explicitly authorized by SORNA § 127(b)(2)—would be to adopt a cooperative agreement with a state in which it is located to include information concerning the sex offenders subject to the tribe's jurisdiction on the state's sex offender website. But an additional option afforded under the final guidelines is for tribes to enter into agreements or arrangements among themselves for the shared administration or operation of websites covering the sex offenders of the participating tribes.

Although SORNA does not explicitly authorize intertribal agreements or arrangements for the cooperative discharge of registration and notification functions, there is no inconsistency between appropriately designed arrangements of this type and realization of SORNA's substantive objectives for sex offender registration and notification. Moreover, such arrangements may facilitate tribal implementation of SORNA by allowing the pooling of resources and expertise and avoiding the need for duplication of effort among tribes with similar registration and notification responsibilities. The implementation of

the SORNA requirements by tribes through such cooperative arrangements with other tribes will accordingly be considered as satisfying the SORNA substantial implementation standard.

Beyond concerns about facilitating cooperative intertribal efforts, which are addressed in the final guidelines as discussed above, a common theme in the comments received from tribes or tribal organizations was concern about the treatment of tribes that are not registration jurisdictions for SORNA purposes. Some commenters urged that tribes subject to state law enforcement jurisdiction under 18 U.S.C. 1162 be treated more like tribes that are allowed to be SORNA registration jurisdictions under SORNA § 127 and have made elections to that effect. SORNA § 127(a)(2)(A) provides that the SORNA registration and notification functions for tribes within the scope of 18 U.S.C. 1162 are automatically delegated to the state. As this is a statutory matter, the guidelines cannot change it.

However, the final guidelines have been modified to make it clear that § 1162 tribes are not excluded from carrying out sex offender registration and notification functions, either as an exercise of their sovereign powers to the extent that there is no conflict with the state's discharge of its responsibilities under SORNA, or pursuant to a decision by the state that sex offender registration functions can be most effectively carried out by tribal authorities with respect to sex offenders subject to the tribe's jurisdiction. Moreover, states have the same responsibility to carry out the SORNA registration and notification functions in relation to sex offenders in § 1162 tribal areas as they do in relation to sex offenders in other areas in the state. The SMART Office will take seriously the need to ensure that all states within the scope of § 1162 discharge these responsibilities. The same points apply in relation to the relatively small number of tribes that were eligible to make an election to be a SORNA registration jurisdiction under the terms of SORNA § 127(a)(1)(A) but have not made such an election.

Some commenters expressed more specific concerns about ensuring that tribes that are not SORNA registration jurisdictions receive notice concerning the entry or presence of sex offenders in their territories. In this connection, the notification requirements of SORNA § 121 apply in relation to all entities within a state as described in that section. This will serve to make information concerning the location and relocation of sex offenders available to agencies, organizations, and individuals in tribes that are not SORNA registration jurisdictions, as with others agencies and organizations within the state. Specific requirements and means of access to such information under § 121(b) are discussed in Part VII.B of the guidelines.

A number of tribal commenters expressed concerns about SORNA § 127(a)(2)(C), which provides for delegation of the SORNA registration and notification functions to the state or states within which a tribe is located if ''the Attorney General determines that the tribe has not substantially implemented the requirements of this subtitle and is not likely to become capable of doing so within a reasonable amount of time.'' This provision for involuntary delegation to a state or states in the specified circumstances was included in SORNA to foreclose any possibility of uncloseable gaps in the nationwide network of sex offender registration and notification programs. The Department of Justice hopes and expects, however, that the occurrence of such an involuntary delegation will never be necessary, given the strong interest of the tribes in effective registration and notification for sex offenders subject to their jurisdictions, and the priority that the SMART Office gives to working with all tribes and other jurisdictions to facilitate the implementation of SORNA's requirements in relation to tribal areas. Moreover, substantial time remains for tribal implementation efforts. Tribal jurisdictions, like other jurisdictions, enjoy the three-year grace period provided by SORNA § 124 for SORNA implementation (commencing on July 27, 2006), and the possibility of an extension of time for up to an additional two years under that provision. In addition, § 127(a)(2)(C) does not require an involuntary delegation if a tribe fails to implement SORNA within the normally allowed time under § 124, unless the Attorney General makes a further determination that the tribe is not likely to become capable of substantially implementing SORNA within a reasonable amount of time.

IV. Covered Sex Offenses and Sex Offenders

A. Convictions Generally

Tribal Convictions

The proposed guidelines stated that jurisdictions could choose not to require registration based on Indian tribal sex offense convictions, where the defendant had not been afforded a right to counsel to which he would have been entitled in comparable state proceedings. Many comments received from tribal organizations and individual tribes objected to this provision. They argued that tribal convictions should be respected, and noted that many procedural protections for defendants are provided in tribal proceedings as a matter of federal law and in practice, including the right to counsel (though defined differently from the corresponding right in state proceedings). *See* 25 U.S.C. 1302.

These comments are persuasive. SORNA's registration and notification requirements are premised on a person's conviction for a sex offense. *See, e.g.*, SORNA §§ 111(1), 113(a). With respect to covered ''sex offense[s],'' SORNA provides no basis for differentiating between tribal offenses and offenses under the laws of other domestic jurisdictions. Rather, it states expressly that ''sex offense'' includes ''criminal offense[s]'' of specified types, and that ''criminal offense'' in the relevant sense means ''a State, local, *tribal,* foreign, or military offense * * * or other criminal offense.'' SORNA § 111(5)(A)(i)–(ii), 111(6) (emphasis added).

Likewise, with respect to ''conviction[s],'' SORNA does not differentiate between tribal convictions and convictions by other U.S. jurisdictions. SORNA does incorporate a special proviso with respect to foreign convictions, stating in § 111(5)(B) that ''[a] foreign conviction is not a sex offense for the purposes of this title if it was not obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established under section 112.'' If it had similarly been contemplated that the Attorney General's guidelines would adopt further conditions for the effectiveness of Indian tribal convictions under SORNA, one would have expected SORNA to include some proviso comparable to § 111(5)(B) for tribal convictions. But SORNA contains no such proviso.

The final guidelines accordingly do not differentiate between tribal convictions and convictions by other United States jurisdictions as predicates for sex offender registration and notification.

Nominal Variations on ''Conviction''

The proposed guidelines stated that SORNA's requirements are not waived by nominal or terminological variations in the designations that jurisdictions use in referring to the dispositions of criminal cases. For example, SORNA's requirements remain applicable if a jurisdiction has a procedure under which certain sex offense convictions (e.g., those of young adult sex offenders who satisfy certain criteria) are referred

to as something other than ''convictions,'' or are nominally ''vacated'' or ''set aside,'' but the sex offender remains subject to penal consequences based on the conviction. Some commenters objected to this aspect of the proposed guidelines, arguing that jurisdictions should be free to make SORNA's requirements inapplicable by such means.

The issue raised by these comments is whether individual jurisdictions have a free hand to stipulate that the dispositions of criminal cases do not constitute ''convictions'' for purposes of SORNA. If that were the case, a jurisdiction could make the SORNA registration and notification requirements inapplicable to its sex offenders merely by varying its terminology—referring to certain classes of criminal convictions for sex offenses by some term other than ''conviction''—and there would then be no national baseline of covered sex offenders and registration/notification requirements applicable thereto.

Such an approach would be inconsistent with SORNA's purpose to establish ''a comprehensive national system for the registration of [sex] offenders.'' SORNA § 102. SORNA's requirements apply to anyone who ''was convicted of a sex offense.'' *See* SORNA §§ 111(1) (defining ''sex offender''), 113 (applying SORNA's registration requirements to ''sex offender[s]''). While the statutory definitions of sex offenses falling within SORNA's registration categories, *see* SORNA § 111(5)–(8), will vary from jurisdiction to jurisdiction, the meaning of ''convicted'' for purposes of SORNA is a matter of federal law, and its applicability is not determined by the terminology a jurisdiction uses in referring to the disposition of a criminal case. Notably, in light of SORNA § 111(8), even certain juvenile delinquents are deemed to be ''convicted'' and hence required to register under SORNA's standards, if the juvenile is at least 14 years old and the offense for which the juvenile was adjudicated delinquent is sufficiently serious. But under these commenters' proposal, jurisdictions could avoid requiring registration for an *adult* offender convicted of such a crime merely by using some other term in referring to the conviction (*e.g.*, ''youthful offender disposition'').

SORNA does not afford such latitude to waive its requirements in this manner and no change has been made in the final guidelines on this point.

Juvenile Adjudications

A number of commenters criticized the proposed guidelines' explanation of SORNA § 111(8), which provides that certain juvenile delinquency adjudications are to be treated as convictions for registration purposes under SORNA. Many of these commenters argued that registration or public notification concerning juveniles adjudicated delinquent for sex offenses would be inappropriate or counterproductive, on such grounds as the following: that juveniles are less likely to reoffend, less culpable, and more amenable to treatment than adult offenders; that registration of juveniles will deter reporting of their crimes by their families and will promote avoidance of adjudicatory dispositions of their cases that reflect the actual offense conduct; that juveniles subject to registration or notification will be adversely affected with respect to education, employment, treatment, socialization, and personal security; and that premising registration or notification on juvenile delinquency adjudications is at odds with the characteristics and objectives of juvenile justice systems, including their requirements of confidentiality and orientation towards treatment and rehabilitation. The commenters advanced various recommendations for addressing these concerns, including not registering juveniles at all, making registration or notification for juveniles a matter of judicial discretion, or limiting registration or notification for juveniles to cases involving particularly violent or serious sex offenses.

The more far reaching proposals for changes concerning the treatment of juveniles cannot be accepted because they would require a nullification of the judgment in SORNA that a narrowly defined class of juvenile delinquency adjudications are to be treated on a par with adult convictions for registration and notification purposes. Predecessor bills to SORNA took divergent approaches to this issue. Some excluded juvenile delinquents entirely from their registration and notification requirements, while others provided that juvenile delinquency adjudications would be treated the same as adult convictions across the board. *Compare* S. 1086, §§ 102(1), 110, 109th Cong., 2d Sess. (2006) (exclusion of juvenile delinquency adjudications in Senate-passed bill), *with* H.R. 3132, § 111(3), 109th Cong., 1st Sess. (2005) (juvenile delinquency adjudications treated the same as adult convictions in House-passed bill).

The resolution of this issue in SORNA as enacted is an intermediate approach that does not generally require that juveniles be treated the same as adults, but does affirmatively treat certain juvenile delinquency adjudications as ''convictions,'' and the juveniles subject to such adjudications as ''sex offenders'' subject to the SORNA registration and notification requirements, under the following criteria: (i) The juvenile must have been at least 14 years old at the time of the offense, (ii) the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in 18 U.S.C. 2241) or an attempt or conspiracy to commit such an offense, and (iii) the registration period to which the juvenile is subject may be reduced from life to 25 years if certain ''clean record'' conditions are satisfied. See SORNA §§ 111(1), (8), 115(b)(3)(B). This is the legislative decision that the guidelines must ''interpret and implement.'' SORNA § 112(b). There is no authority to abrogate it or to approve some basically different system for registering (or not registering) juveniles adjudicated delinquent for sex offenses.

As noted above, a more moderate recommendation advanced by some of the commenters was that registration or notification for juveniles be limited to cases involving particularly violent or serious sex offenses. This is more in line with what SORNA actually does provide, limiting the predicate offenses for registration based on juvenile delinquency adjudications to those ''comparable to'' aggravated sexual abuse as described in 18 U.S.C. 2241 (or an attempt or conspiracy to commit such an offense).

It was noted in the comments, however, that under the interpretation of this standard in the proposed guidelines, it could potentially reach some cases not involving sex offenses of the most serious nature, such as a case involving a juvenile delinquency adjudication of a 14-year-old for engaging in consensual sexual play with an 11-year-old. A number of commenters questioned the suitability of such juvenile adjudications as the basis for lengthy or lifetime registration and public notification, and indicated that an inflexible application of the SORNA juvenile coverage requirement to reach such cases could constitute a substantial impediment to jurisdictions' implementation of SORNA.

These comments have provided grounds for further thought concerning the measures that will be considered substantial implementation of SORNA in relation to juveniles adjudicated delinquent for sex offenses. The federal

offense of aggravated sexual abuse, 18 U.S.C. 2241, which provides the touchstone for juvenile coverage under SORNA § 111(8), encompasses a range of serious sexually assaultive conduct that would correspond roughly to the common understanding of the notion of ''rape.'' Specifically, it proscribes engaging in a sexual act with another by means of force or the threat of serious violence, or by rendering unconscious or involuntarily drugging the victim. These aspects of the offense apply regardless of the age of the perpetrator or victim.

However, there are certain features of 18 U.S.C. 2241 that provide a broader compass in cases involving victims who fall below specified age thresholds. Specifically, sexual acts with victims below the age of 12 are covered, even in cases involving no overt violence or coercion. *See* 18 U.S.C. 2241(c). In addition, under the associated definition of covered ''sexual act[s],'' the relevant acts are for the most part those involving penetration, but direct genital touching—which would otherwise support only liability for lesser ''sexual contact'' offenses—is treated as a covered ''sexual act'' if the victim is below the age of 16. *See* 18 U.S.C. 2246(2)(D).

In relation to the aspects of 18 U.S.C. 2241 that depend specially on the age of the victim, there is no difficulty in applying them without qualification as a basis for sex offender registration and notification in cases involving adult offenders. For example, a 30-year-old who engages in sexual activity with an 11-year-old plausibly falls within a class of persons who may constitute a danger to children, and the protective functions served by SORNA's registration and notification requirements are implicated, regardless of finer issues concerning the victim's acquiescence or resistance or the exact nature of the sexual activity.

In comparison, SORNA's public safety objectives may not be similarly implicated by juvenile cases like those pointed to by the commenters, such as a case involving a 14-year-old adjudicated delinquent based on consensual sexual play with an 11-year-old. Cases of this type fall within the definitional scope of 18 U.S.C. 2241 only because of special features of that provision that create liability for nonviolent or lesser sexual offenses based on the victim's age. But in such a case, the delinquent may himself be a child who is not far removed in age from the victim, and the offense may be one that would not entail comparable registration and notification requirements for an adult offender, if committed by the adult offender against a victim who was near in age to himself.

Based on this reconsideration of the juvenile coverage issue, the final guidelines reflect a judgment that the objectives of SORNA § 111(8) will not be substantially undermined if jurisdictions are afforded discretion concerning registration and notification for juveniles adjudicated delinquent on the basis of offenses that are within the definitional scope of 18 U.S.C. 2241 only because of the age of the victim. In positive terms, jurisdictions will be considered to have substantially implemented SORNA in this context if they apply SORNA's registration and notification requirements to juveniles at least 14 years old who are adjudicated delinquent for committing offenses amounting to rape or its equivalent (or an attempt or conspiracy to commit such an offense), as specified in the final guidelines.

B. Foreign Convictions

Some commenters expressed the concern that the requirement under SORNA to register sex offenders based on foreign convictions would create unmanageable burdens on jurisdictions to assess the fairness of foreign judicial proceedings. However, the guidelines have been formulated so as to minimize any such burden. In part, they require registration categorically based on sex offense convictions under the laws of four specified foreign countries—Canada, United Kingdom, Australia, and New Zealand—and based on convictions in countries whose judicial systems have been favorably assessed in the Country Reports on Human Rights Practices that are prepared by the U.S. Department of State. Jurisdictions are not required to exempt any sex offense convictions in other foreign countries from registration requirements, but if they wish to do so, they may exempt convictions that they consider unreliable indicia of factual guilt, utilizing whatever process or procedure they choose to adopt in making such determinations. The treatment of foreign convictions has accordingly not been changed in the final guidelines, except for limited editing to emphasize the extent of jurisdictions' discretion in approaching this issue, and correcting a reference to ''Great Britain'' in the proposed guidelines to refer instead to ''United Kingdom.''

C.-E. Sex Offenses Generally; Specified Offenses Against Minors; Protected Witnesses

The proposed guidelines' general explanation of SORNA's offense coverage requirements and exceptions or qualifications relating to protected witnesses have not been substantially changed in the final guidelines. Critical comments relating to this aspect of the guidelines largely reflected misapprehensions that SORNA requires registration based on offenses that are not in the SORNA registration categories—e.g., consensual sexual offenses involving minors or youth of like age—or proposed changes that SORNA does not allow, such as waiving registration based on offenses in the covered categories unless the offender is found to meet some threshold of likely dangerousness under a ''risk assessment'' system.

V. Classes of Sex Offenders

The proposed guidelines' general explanation of SORNA's ''tiers,'' and their implications for registration and notification requirements, have not been substantially changed in the final guidelines. The critical comments received on this aspect of the guidelines largely amounted to arguments that other means of classifying sex offenders would be better policy, such as reliance on risk assessments that take account of a broader range of factors than those authorized in the SORNA tier definitions. As described and advocated in these comments, such alternative systems would involve less consistency and predictability in sex offender registration and notification requirements, and would make available less information (or no information) concerning many sex offenders to the authorities or the public. The comments do not establish that these systems represent a sounder balancing of interests than the standards enacted in SORNA. In any event, the adoption of such alternative classification systems cannot be regarded as substantial implementation of SORNA insofar as they entail registration and notification requirements that fall below the SORNA minimum requirements—see the discussion above in connection with Part II.E of the guidelines—and hence cannot be authorized by the guidelines.

Some comments received from Indian tribes or tribal organizations objected to the uniform treatment of tribal sex offense convictions as supporting only ''tier I'' classification for SORNA purposes. They noted that this results from the federal law limitation of tribal court jurisdiction to misdemeanor penalties, though the underlying sex offense may be serious and would result in felony penalties if prosecuted in a state jurisdiction or the federal jurisdiction. This feature of the guidelines cannot be changed because it is statutory. SORNA § 111(2)–(4)

classifies sex offenders as tier II or tier III only on the basis of offenses punishable by imprisonment for more than one year. However, as with other features of SORNA, the requirements associated with the tier I classification constitute only minimum standards. Tribal jurisdictions and other jurisdictions are free to prescribe more extensive registration and notification requirements for sex offenders convicted of tribal offenses, taking into account the substantive nature of the offenses or other factors, notwithstanding the misdemeanor status of the offenses in terms of the maximum permitted penalty. The final guidelines make this point more explicitly.

Responding to other comments received, changes have also been made in Part V to: (i) Clarify further that the elements of the offense of conviction may be relied on in making tier classifications, except with respect to victim age; (ii) clarify the operation of tier enhancements based on recidivism, where the earlier conviction supporting a higher tier classification occurred prior to the enactment of SORNA or its implementation in a particular jurisdiction; and (iii) emphasize that the tier classification criteria do not constitute independent requirements to register offenders for whom SORNA does not otherwise require registration.

VI. Required Registration Information

Registration Information Requirements Added by the Guidelines

Some commenters objected globally to the guidelines' requirement that the sex offender registries obtain certain types of information that are not expressly required by SORNA § 114, such as e-mail addresses and comparable Internet identifiers, telephone numbers, temporary lodging information, travel document information, professional license information, and date of birth information. The guidelines have not been changed on this point. Many of these comments projected that sex offenders would be exposed to harassment or other adverse consequences because of the public disclosure of such information, reflecting an incorrect assumption that SORNA or the guidelines would require that all such information be posted on the public sex offender websites. The actual website posting requirements under the guidelines are more limited, and the final guidelines have been revised to make this point with greater clarity, as discussed in connection with Part VII of the guidelines below. All of the additional items are within the scope of the Attorney General's express statutory authority to require additional registration information. *See* SORNA § 114(a)(7), (b)(8). All are justified as means of furthering SORNA's public safety objectives, as the guidelines explain in their discussion of the additional required information.

Tribal Concerns

Many of the comments received from Indian tribes or tribal organizations objected to a specification in the proposed guidelines that the names and aliases that sex offenders are required to register include ''traditional names given by family or clan pursuant to ethnic or tribal tradition.'' The purpose of this provision was to ensure that the registration information would include the names by which sex offenders are commonly known in their communities. It was not intended to require registration or disclosure of secret names of religious or ceremonial significance, and such names are not needed to further the purposes of sex offender registration and notification. The final guidelines have accordingly modified the description of this requirement so as to limit it to ethnic or tribal names by which the sex offender is commonly known.

Some of the tribal commenters also expressed concern about the requirements relating to DNA information from sex offenders, describing situations in which tribal communities had been misled about the uses that would be made of DNA samples they provided. However, SORNA's requirement on this point, as the guidelines explain, is only that jurisdictions ensure that DNA samples are collected from sex offenders for purposes of analysis and inclusion in the Combined DNA Index System (CODIS). The normal rules and procedures for DNA information in CODIS are tailored to its use for law enforcement identification purposes, such as matching a perpetrator's DNA collected from crime scene evidence to DNA taken from an offender. These rules and procedures are adequately designed to ensure that the analysis of collected DNA samples and entry of the resulting DNA profiles into CODIS cannot be used for the improper purposes that concern the commenters, such as ascertaining the incidence of genetic traits or disorders in communities or population groups from which the DNA samples are derived.

Requests for Clarification

Some commenters requested additional guidance or clarification regarding particular types of required registration information, such as the information concerning travel and immigration documents, and the statutory requirement to include information concerning addresses at which the sex offender ''will'' be an employee. The final guidelines provide further explanation or clarification on these points.

VII. Disclosure and Sharing of Information

Some of the comments reflected misapprehensions that the guidelines would require public disclosure of a broader range of sex offender information than is actually the case. The guidelines identify a limited number of informational items concerning sex offenders that must be included on the public sex offender Web sites, essentially covering name information, address or location information, vehicle information, physical description, sex offenses for which convicted, and a current photograph. Other types of registration information are within the scope of either mandatory or discretionary exemptions from required public disclosure. The relevant discussion in the final guidelines has been revised for greater clarity on this point.

Some commenters objected specifically to the required public disclosure of the addresses of employers of registered sex offenders, arguing that this information should be exempted from Web site posting, either on a discretionary or mandatory basis. SORNA itself requires that the registration information for sex offenders include employer name and address, but provides a discretionary exemption from public Web site posting for employer name only (not employer address). *Compare* SORNA § 114(a)(4), *with* SORNA § 118(c)(2). The SORNA provisions on this point reflect an accommodation of competing interests. On the one hand, requiring Web site posting of employer name could tar an employer based on the association with the sex offender and deter employers from hiring sex offenders. On the other hand, disclosing no employment-related information or only limited employment-related information could leave the public unaware concerning sex offenders' presence in places where they actually spend much of their time (e.g., 40 hours a week for a sex offender with a full-time job). SORNA accommodates these interests by requiring that the public Web sites include employer address information, but leaving it in the discretion of jurisdictions whether they will include employer name information as well. The

comments received provide no adequate basis for the guidelines to second-guess this legislative judgment concerning the proper accommodation of these interests, even assuming that there would be legal authority to do so.

VIII. Where Registration Is Required

The portion of the guidelines relating to the jurisdictions in which registration is required has been edited to a limited extent for clarity on some points but has not been substantially changed. Some commenters misunderstood SORNA and the guidelines as requiring continued registration with the original jurisdiction of conviction even if the sex offender has no present residence, employment, or school attendance relationship with that jurisdiction. Some took ''jurisdiction'' as including political subdivisions of states, and consequently believed that SORNA prescribes requirements as to the particular locations within states in which sex offenders must be required to register—e.g., in which particular county or counties. SORNA itself and the proposed guidelines do not provide any support for these misconceptions, and additional language has been included in the final guidelines to guard against continued misunderstandings of this type.

IX. Initial Registration

The discussion in this Part has been expanded in the final guidelines to explain the statutory requirement in section 117(a) of SORNA that initial registration of incarcerated sex offenders is to be carried out ''shortly before release.''

Some commenters expressed concern about initial registration in relation to sex offenders whose predicate sex offense convictions predate the enactment of SORNA or its implementation in a particular jurisdiction. The guidelines require registration of such sex offenders in conformity with SORNA if they remain in the system as prisoners, supervisees, or registrants, or if they later reenter the system because of a subsequent criminal conviction. The commenters' concerns focused heavily on the fourth category—sex offenders who were fully out of the system at the time of SORNA implementation, but later reenter it based on conviction for some other crime. Concerns were expressed that registration of offenders in this category would require jurisdictions to examine the criminal histories of all new criminal convicts indefinitely to ascertain whether they have a sex offense conviction somewhere in the past that would require registration under the SORNA standards. A particular concern was that in cases in which the sex offense conviction occurred long ago, information about it might not be disclosed through an ordinary criminal history check, potentially necessitating extraordinary records search efforts to determine whether the offender must register. Concerns also were expressed about the adequacy of ordinary criminal history information to determine the extent of registration requirements under SORNA, including whether the sex offender's registration period has expired or still has time left to run. For example, whether the victim of a sexual contact offense was an adult or a minor may make the difference between the offender's classification as tier I or tier II under the SORNA standards, with consequent differences in the required registration period (15 years for tier I versus 25 years for tier II). But the criminal history information available in a case in which the sex offense conviction predated a jurisdiction's implementation of SORNA might show simply conviction of a sexual contact offense with no indication as to victim age.

The final guidelines address the foregoing concerns by clarifying that jurisdictions may rely on their normal methods and standards for obtaining and reviewing criminal history information, and on the information available in the records obtained by such means, in ascertaining SORNA registration requirements for sex offenders in the ''retroactive'' classes.

Some of the comments received from Indian tribes or tribal organizations proposed that the Federal Bureau of Prisons should be responsible for initial registration of federal sex offenders who will be released to tribal areas. However, there is a more limited statutory release procedure for federal sex offenders under 18 U.S.C. 4042(c), which requires the Federal Bureau of Prisons or federal probation offices to notify sex offenders of their registration requirements under SORNA around the time of their release or sentencing. That provision further requires the Bureau of Prisons and the federal probation offices to notify state and local law enforcement and registration agencies in the destination jurisdictions, which include tribal jurisdictions for sex offenders released to tribal areas. The failure of such a sex offender to appear in the destination jurisdiction and register as required would be reportable to federal authorities as provided in Part XIII of the guidelines, and would generally result in investigation of the matter by federal supervision or law enforcement authorities. In the normal situation in which the released federal sex offender does appear in the destination jurisdiction as required, that jurisdiction would register the sex offender as it does sex offenders entering from other jurisdictions.

X. Keeping the Registration Current

Some commenters expressed concern about requiring sex offenders to report changes of certain types of registration information through in-person appearances. For example, SORNA § 113(c) requires that changes of employment be reported through in-person appearances within three business days. Consider the effect, for example, in relation to a sex offender who obtains work—e.g., construction work or other manual labor—by showing up each morning at a site that contractors visit to recruit day labor. If the sex offender's employer varied day to day, the requirement to report changes in employment through in-person appearances might effectively require the sex offender to make an in-person appearance to report his recent employment history every few days, with attendant burdens on the jurisdiction and the offender.

In relation to required registration information, the proposed guidelines recognized that sex offenders may reside somewhere without having definite residence addresses, and similarly that sex offenders may be employed without fixed or settled employment. For such cases, Part VI of the guidelines affords necessary flexibility by providing that jurisdictions are to obtain information concerning such transient residence or employment with whatever definiteness is possible under the circumstances. The final guidelines incorporate comparable provisions in Part X so as to afford jurisdictions flexibility in dealing with the reporting of changes in residence or employment by sex offenders whose residence or employment is transient in character.

Comments were also received concerning a potential gap in the reporting requirements for sex offenders who terminate residence, employment, or school attendance in a jurisdiction but do not have any definite expectation about residing, working, or attending school elsewhere. For example, consider the case of a transient sex offender who is moving out of a state in which he has been living, but cannot say in which state or other jurisdiction he will reside next. The proposed guidelines did not address the reporting requirements in such situations with adequate clarity. The final guidelines provide that the requirement for sex offenders to keep

the registration current includes requiring them to report consistently the termination of residence, employment, or school attendance to the appropriate jurisdiction in which they have been registered, regardless of whether any new place of residence, employment, or school attendance can be identified.

Responding to comments and questions received, a final paragraph also has been added to Part X in the final guidelines to clarify further that the SORNA requirement that registrants report changes in registration information through in-person appearances pertains only to changes in name and to changes in residence, employment, or school attendance between or within jurisdictions. The manner in which sex offenders are to report other changes in registration information is a matter within jurisdictions' discretion.

XI. Verification/Appearance Requirements

The discussion of SORNA's requirement of periodic in-person appearances by registrants to verify and update registration information has not been substantially modified in the final guidelines because it did not draw extensive comments, and no comments received provided any persuasive reasons to change the discussion of this requirement. However, responding to comments about situations in which a registrant dies, a paragraph has been added to Part XI in the final guidelines to provide advice to jurisdictions about the updating of registration information and public Web site postings in such situations.

XII. Duration of Registration

As discussed in earlier portions of the summary, the explanation concerning the required duration of registration is revised in the final guidelines. The changes clarify further (i) the discretionary nature of tolling during subsequent periods in which the sex offender is in custody, and (ii) the discretion of jurisdictions to adopt registration periods that are longer than the required SORNA minimum.

XIII. Enforcement of Registration Requirements

The discussion of enforcement of registration requirements in the proposed guidelines has not been modified in the final guidelines because it did not draw extensive comment and the comments received did not provide any persuasive reasons to change this part.

The National Guidelines for Sex Offender Registration and Notification

Contents

I. Introduction

The Sex Offender Registration and Notification Act (''SORNA'' or ''the Act''), which is title I of the Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109–248), provides a new comprehensive set of minimum standards for sex offender registration and notification in the United States. These Guidelines are issued to provide guidance and assistance to covered jurisdictions—the 50 States, the District of Columbia, the principal U.S. territories, and Indian tribal governments—in implementing the SORNA standards in their registration and notification programs.

The adoption of these Guidelines carries out a statutory directive to the Attorney General, appearing in SORNA § 112(b), to issue guidelines to interpret and implement SORNA. Other provisions of SORNA establish the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (the ''SMART Office''), a component of the Office of Justice Programs of the U.S. Department of Justice. The SMART Office is authorized by law to administer the standards for sex offender registration and notification that are set forth in SORNA and interpreted and implemented in these Guidelines. It is further authorized to cooperate with and provide assistance to states, local governments, tribal governments, and other public and private entities in relation to sex offender registration and notification and other measures for the protection of the public from sexual abuse or exploitation. *See* SORNA § 146(c). Accordingly, the SMART Office should be regarded by jurisdictions discharging registration and notification functions as their key partner and resource in the federal government in further developing and strengthening their sex offender registration and notification programs, and the SMART Office will provide all possible assistance for this purpose.

The development of sex offender registration and notification programs in the United States has proceeded rapidly since the early 1990s, and at the present time such programs exist in all of the states, the District of Columbia, and some of the territories and tribes. These programs serve a number of important public safety purposes. In their most basic character, the registration aspects of these programs are systems for tracking sex offenders following their release into the community. If a sexually violent crime occurs or a child is molested, information available to law enforcement through the registration program about sex offenders who may have been present in the area may help to identify the perpetrator and solve the crime. If a particular released sex offender is implicated in such a crime, knowledge of the sex offender's whereabouts through the registration system may help law enforcement in making a prompt apprehension. The registration program may also have salutary effects in relation to the likelihood of registrants committing more sex offenses. Registered sex offenders will perceive that the authorities' knowledge of their identities, locations, and past offenses reduces the chances that they can avoid detection and apprehension if they reoffend, and this perception may help to discourage them from engaging in further criminal conduct.

Registration also provides the informational base for the other key aspect of the programs—notification—which involves making information about released sex offenders more broadly available to the public. The means of public notification currently include sex offender Web sites in all states, the District of Columbia, and some territories, and may involve other forms of notice as well. The availability of such information helps members of the public to take common sense measures for the protection of

themselves and their families, such as declining the offer of a convicted child molester to watch their children or head a youth group, or reporting to the authorities approaches to children or other suspicious activities by such a sex offender. Here as well, the effect is salutary in relation to the sex offenders themselves, since knowledge by those around them of their sex offense histories reduces the likelihood that they will be presented with opportunities to reoffend.

While sex offender registration and notification in the United States are generally carried out through programs operated by the individual states and other non-federal jurisdictions, their effectiveness depends on also having effective arrangements for tracking of registrants as they move among jurisdictions and some national baseline of registration and notification standards. In a federal union like the United States with a mobile population, sex offender registration could not be effective if registered sex offenders could simply disappear from the purview of the registration authorities by moving from one jurisdiction to another, or if registration and notification requirements could be evaded by moving from a jurisdiction with an effective program to a nearby jurisdiction that required little or nothing in terms of registration and notification.

Hence, there have been national standards for sex offender registration in the United States since the enactment of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act (42 U.S.C. 14071) in 1994. The national standards from their inception have addressed such matters as the offenses for which registration should be required, updating and periodic verification of registration information, the duration of registration, public notification, and continued registration and tracking of sex offenders when they relocate from one jurisdiction to another.

Following the enactment of the Wetterling Act in 1994, that Act was amended a number of times, in part reflecting and in part promoting trends in the development of the state registration and notification programs. Ultimately, Congress concluded that the patchwork of standards that had resulted from piecemeal amendments should be replaced with a comprehensive new set of standards—the SORNA reforms, whose implementation these Guidelines concern—that would close potential gaps and loopholes under the old law, and generally strengthen the nationwide network of sex offender registration and notification programs. Important areas of reform under the SORNA standards include:

Extending the jurisdictions in which registration is required beyond the 50 States, the District of Columbia, and the principal U.S. territories, to include Indian tribal jurisdictions.

Extending the classes of sex offenders and sex offenses for which registration is required.

Consistently requiring that sex offenders in the covered classes register and keep the registration current in the jurisdictions in which they reside, work, or go to school.

Requiring more extensive registration information.

Adding to the national standards periodic in-person appearances by registrants to verify and update the registration information.

Broadening the availability of information concerning registered sex offenders to the public, through posting on sex offender Web sites and by other means.

Adopting reforms affecting the required duration of registration.

In addition, SORNA strengthens the federal superstructure elements that leverage and support the sex offender registration and notification programs of the registration jurisdictions. These strengthened elements are: (i) Stepped-up federal investigation and prosecution efforts to assist jurisdictions in enforcing sex offender registration requirements; (ii) new statutory provisions for the national database and national Web site (i.e., the National Sex Offender Registry and the Dru Sjodin National Sex Offender Public Web site) that effectively compile information obtained under the registration programs of the states and other jurisdictions and make it readily available to law enforcement or the public on a nationwide basis; (iii) development by the federal government of software tools, which the states and other registration jurisdictions will be able to use to facilitate the operation of their registration and notification programs in conformity with the SORNA standards; and (iv) establishment of the SMART Office to administer the national standards for sex offender registration and notification and to assist registration jurisdictions in their implementation.

Through the cooperative effort of the 50 States, the District of Columbia, the U.S. territories, and Indian tribal governments with the responsible federal agencies, the SORNA goal of an effective and comprehensive national system of registration and notification programs can be realized, with great benefit to the ultimate objective of ''protect[ing] the public from sex offenders and offenders against children.'' SORNA § 102. These Guidelines provide the blueprint for that effort.

II. General Principles

Before turning to the specific SORNA standards and requirements discussed in the remainder of these Guidelines, certain general points should be noted concerning the interpretation and application of the Act and these Guidelines:

A. Terminology

These Guidelines use key terms with the meanings defined in SORNA. In particular, the term ''jurisdiction'' is consistently used with the meaning set forth in SORNA § 111(10). As defined in that provision, it refers to the 50 States, the District of Columbia, the five principal U.S. territories—i.e., the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the United States Virgin Islands—and Indian tribes that elect to function as registration jurisdictions under SORNA § 127. (For more concerning covered jurisdictions, see Part III of these Guidelines.) Thus, when these Guidelines refer to ''jurisdictions'' implementing the SORNA registration and notification requirements, the reference is to implementation of these requirements by the jurisdictions specified in SORNA § 111(10). ''Jurisdictions'' is not used to refer to other territorial or political units or subdivisions, such as counties, cities, or towns of states or territories. Likewise, the term ''sex offense'' is not used to refer to any and all crimes of a sexual nature, but rather to those covered by the definition of ''sex offense '' appearing in SORNA § 111(5), and the term ''sex offender'' has the meaning stated in SORNA § 111(1). (For more concerning covered sex offenses and offenders, *see* Part IV of these Guidelines.)

SORNA's registration requirements generally come into play when sex offenders are released from imprisonment, or when they are sentenced if the sentence does not involve imprisonment. *See* SORNA § 113(b). ''Imprisonment '' as it is used in SORNA and these Guidelines refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. It is not used in any narrow technical sense, such as confinement in a state ''prison'' as opposed to a local ''jail.''

SORNA includes a number of references relating to implementation by jurisdictions of the requirements of ''this title.'' Section 125 provides a mandatory 10% reduction in certain federal justice assistance funding for jurisdictions that fail, as determined by the Attorney General, to substantially implement ''this title'' within the time frame specified in section 124, and section 126 authorizes a Sex Offender Management Assistance grant program to help offset the costs of implementing ''this title.'' In the context of these provisions, the references to ''this title'' function as a shorthand for the SORNA sex offender registration and notification standards. They do not mean that funding under these provisions is affected by a jurisdiction's implementation or non-implementation of reforms unrelated to sex offender registration and notification that appear in later portions of title I of the Adam Walsh Child Protection and Safety Act of 2006 (particularly, subtitle C of that title).

Section 125(d) of SORNA states that the provisions of SORNA ''that are cast as directions to jurisdictions or their officials constitute, in relation to States, only conditions required to avoid the reduction of Federal funding under this section.'' Statements in these Guidelines that SORNA requires jurisdictions to adopt certain measures should be understood accordingly in their application to the states. Since the SORNA requirements relating to sex offender registration and notification are, in relation to the states, only partial funding eligibility conditions, creation of these requirements is within the constitutional authority of the federal government.

B. Minimum National Standards

SORNA establishes a national baseline for sex offender registration and notification programs. In other words, the Act generally constitutes a set of *minimum* national standards and sets a floor, not a ceiling, for jurisdictions' programs. Hence, for example, a jurisdiction may have a system that requires registration by broader classes of convicted offenders than those identified in SORNA, or that requires, in addition, registration by certain classes of non-convicts (such as persons acquitted on the ground of insanity of sexually violent crimes or child molestation offenses, or persons released following civil commitment as sexually dangerous persons). A jurisdiction may require verification of the registered address or other registration information by sex offenders with greater frequency than SORNA requires, or by other means in addition to those required by SORNA (e.g., through the use of mailed address verification forms, in addition to in-person appearances). A jurisdiction may require sex offenders to register for longer periods than those required by the SORNA standards. A jurisdiction may require that changes in registration information be reported by registrants on a more stringent basis than the SORNA minimum standards—e.g., requiring that changes of residence be reported before the sex offender moves, rather than within three business days following the move. A jurisdiction may extend Web site posting to broader classes of registrants than SORNA requires and may post more information concerning registrants than SORNA and these Guidelines require.

Such measures, which encompass the SORNA baseline of sex offender registration and notification requirements but go beyond them, generally have no negative implication concerning jurisdictions' implementation of or compliance with SORNA. This is so because the general purpose of SORNA is to protect the public from sex offenders and offenders against children through effective sex offender registration and notification, and it is not intended to preclude or limit jurisdictions' discretion to adopt more extensive or additional registration and notification requirements to that end. There is an exception to this general rule in SORNA § 118(b), which requires that certain types of information, such as victim identity and registrants' Social Security numbers, be excluded from jurisdictions' publicly accessible sex offender Web sites, as discussed in Part VII of these Guidelines. In other respects, jurisdictions' discretion to go further than the SORNA minimum is not limited.

C. Retroactivity

The applicability of the SORNA requirements is not limited to sex offenders whose predicate sex offense convictions occur following a jurisdiction's implementation of a conforming registration program. Rather, SORNA's requirements took effect when SORNA was enacted on July 27, 2006, and they have applied since that time to all sex offenders, including those whose convictions predate SORNA's enactment. *See* 72 FR 8894, 8895–96 (Feb. 28, 2007); 28 CFR 72.3. The application of the SORNA standards to sex offenders whose convictions predate SORNA creates no ex post facto problem ''because the SORNA sex offender registration and notification requirements are intended to be non-punitive, regulatory measures adopted for public safety purposes, and hence may validly be applied (and enforced by criminal sanctions) against sex offenders whose predicate convictions occurred prior to the creation of these requirements. *See Smith* v. *Doe*, 538 U.S. 84 (2003).'' 72 FR at 8896.

As a practical matter, jurisdictions may not be able to identify all sex offenders who fall within the SORNA registration categories, where the predicate convictions predate the enactment of SORNA or the jurisdiction's implementation of the SORNA standards in its registration program, particularly where such sex offenders have left the justice system and merged into the general population long ago. But many sex offenders with such convictions will remain in (or reenter) the system because:

They are incarcerated or under supervision, either for the predicate sex offense or for some other crime;

They are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; or

They hereafter reenter the jurisdiction's justice system because of conviction for some other crime (whether or not a sex offense).

Sex offenders in these three classes are within the cognizance of the jurisdiction, and the jurisdiction will often have independent reasons to review their criminal histories for penal, correctional, or registration/notification purposes. Accordingly, a jurisdiction will be deemed to have substantially implemented the SORNA standards with respect to sex offenders whose predicate convictions predate the enactment of SORNA or the implementation of SORNA in the jurisdiction's program if it registers these sex offenders, when they fall within any of the three classes described above, in conformity with the SORNA standards. (For more about the registration of sex offenders in these classes, see the discussion under ''retroactive classes'' in Part IX of these Guidelines.)

The required retroactive application of the SORNA requirements will also be limited in some cases by the limits on the required duration of registration. As discussed in Part XII of these Guidelines, SORNA requires minimum registration periods of varying length for sex offenders in different categories, defined by criteria relating to the nature of their sex offenses and their history of recidivism. This means that a sex offender with a pre-SORNA conviction

may have been in the community for a greater amount of time than the registration period required by SORNA. For example, SORNA § 115 requires registration for 25 years for a sex offender whose offense satisfies the ''tier II'' criteria of section 111(3). A sex offender who was released from imprisonment for such an offense in 1980 is already more than 25 years out from the time of release. In such cases, a jurisdiction may credit the sex offender with the time elapsed from his or her release (or the time elapsed from sentencing, in case of a non-incarcerative sentence), and does not have to require the sex offender to register on the basis of the conviction, even if the criteria for retroactive application of the SORNA standards under this Part are otherwise satisfied.

As with other requirements under SORNA and these Guidelines, the foregoing discussion identifies only the minimum required for SORNA compliance. Jurisdictions are free to require registration for broader classes of sex offenders with convictions that predate SORNA or the jurisdiction's implementation of the SORNA standards in its program.

D. Automation—Electronic Databases and Software

Several features of SORNA contemplate, or will require as a practical matter, the use of current electronic and cyber technology to seamlessly track sex offenders who move from one jurisdiction to another, ensure that information concerning registrants is immediately made available to all interested jurisdictions, and make information concerning sex offenders immediately available to the public as appropriate. These include provisions for immediate information sharing among jurisdictions under SORNA § 113(c); a requirement in section 119(b) that the Attorney General ensure ''that updated information about a sex offender is immediately transmitted by electronic forwarding to all relevant jurisdictions''; and requirements in section 121(b) that sex offender registration information and updates thereto be provided immediately to various public and private entities and individuals. (For more about these information sharing requirements and associated time frames, see Parts VII.B and X of these Guidelines.)

Carrying out the SORNA information sharing requirements accordingly will entail maintenance by jurisdictions of their registries in the form of electronic databases, whose included information can be electronically transmitted to other jurisdictions and entities. This point is further discussed in connection with the specific SORNA standards, particularly in Parts VI, VII, and X of these Guidelines.

Section 123 of SORNA directs the Attorney General, in consultation with the jurisdictions, to develop and support registry management and Web site software. The purposes of the software include facilitating the immediate exchange of sex offender information among jurisdictions, public access through the Internet to sex offender information and other forms of community notification, and compliance in other respects with the SORNA requirements. As required by section 123, the Department of Justice will develop and make available to the jurisdictions software tools for the operation of their sex offender registration and notification programs, which will, as far as possible, be designed to automate these processes and enable the jurisdictions to implement SORNA's requirements by utilizing the software.

E. Implementation

Section 124 of SORNA sets a general time frame of three years for implementation, running from the date of enactment of SORNA, i.e., from July 27, 2006. The Attorney General is authorized to provide up to two one-year extensions of this deadline. Failure to comply within the applicable time frame would result in a 10% reduction of federal justice assistance funding under 42 U.S.C. 3750 *et seq.* (''Byrne Justice Assistance Grant'' funding). *See* SORNA § 125(a). Funding withheld from jurisdictions because of noncompliance would be reallocated to other jurisdictions that are in compliance, or could be reallocated to the noncompliant jurisdiction to be used solely for the purpose of SORNA implementation.

While SORNA sets minimum standards for jurisdictions' registration and notification programs, it does not require that its standards be implemented by statute. Hence, in assessing compliance with SORNA, the totality of a jurisdiction's rules governing the operation of its registration and notification program will be considered, including administrative policies and procedures as well as statutes.

The SMART Office will be responsible for determining whether a jurisdiction has substantially implemented the SORNA requirements. The affected jurisdictions are encouraged to submit information to the SMART Office concerning existing and proposed sex offender registration and notification provisions with as much lead time as possible, so the SMART Office can assess the adequacy of existing or proposed measures to implement the SORNA requirements and work with the submitting jurisdictions to overcome any shortfalls or problems. At the latest, submissions establishing compliance with the SORNA requirements should be made to the SMART Office at least three months before the deadline date of July 27, 2009—i.e., by April 27, 2009—so that the matter can be determined before the Byrne Grant funding reduction required by SORNA § 125 for noncompliant jurisdictions takes effect. If it is anticipated that a submitting jurisdiction may need an extension of time as described in SORNA § 124(b), the submission to the SMART Office—which should be made by April 27, 2009, as noted—should include a description of the jurisdiction's implementation efforts and an explanation why an extension is needed.

SORNA § 125 refers to ''substantial'' implementation of SORNA. The standard of ''substantial implementation'' is satisfied with respect to an element of the SORNA requirements if a jurisdiction carries out the requirements of SORNA as interpreted and explained in these Guidelines. Hence, the standard is satisfied if a jurisdiction implements measures that these Guidelines identify as sufficient to implement (or ''substantially'' implement) the SORNA requirements.

Jurisdictions' programs cannot be approved as substantially implementing the SORNA requirements if they substitute some basically different approach to sex offender registration and notification that does not incorporate SORNA's baseline requirements—e.g., a ''risk assessment'' approach that broadly authorizes the waiver of registration or notification requirements or their reduction below the minima specified in SORNA on the basis of factors that SORNA does not authorize as grounds for waiving or limiting registration or notification. Likewise, the ''substantial implementation'' standard does not mean that programs can be approved if they dispense wholesale with categorical requirements set forth in SORNA, such as by adopting general standards that do not require registration for offenses included in SORNA's offense coverage provisions, that set regular reporting periods for changes in registration information that are longer than those specified in

SORNA, or that prescribe less frequent appearances for verification or shorter registration periods than SORNA requires.

The substantial implementation standard does, however, contemplate that there is some latitude to approve a jurisdiction's implementation efforts, even if they do not exactly follow in all respects the specifications of SORNA or these Guidelines. For example, section 116 of SORNA requires periodic in-person appearances by sex offenders to verify their registration information. But in some cases this will be impossible, either temporarily (e.g., in the case of a sex offender hospitalized and unconscious because of an injury at the time of the scheduled appearance) or permanently (e.g., in the case of a sex offender who is in a persistent vegetative state). In other cases, the appearance may not be literally impossible, but there may be reasons to allow some relaxation of the requirement in light of the sex offender's personal circumstances. For example, a sex offender may unexpectedly need to deal with a family emergency at the time of a scheduled appearance, where failure to make the appearance will mean not verifying the registration information within the exact time frame specified by SORNA § 116. A jurisdiction may wish to authorize rescheduling of the appearance in such cases. Doing so would not necessarily undermine substantially the objectives of the SORNA verification requirements, so long as the jurisdiction's rules or procedures require that the sex offender notify the official responsible for monitoring the sex offender of the difficulty, and that the appearance promptly be carried out once the interfering circumstance is resolved.

In general, the SMART Office will consider on a case-by-case basis whether jurisdictions' rules or procedures that do not exactly follow the provisions of SORNA or these Guidelines ''substantially'' implement SORNA, assessing whether the departure from a SORNA requirement will or will not substantially disserve the objectives of the requirement. If a jurisdiction is relying on the authorization to approve measures that ''substantially'' implement SORNA as the basis for an element or elements in its system that depart in some respect from the exact requirements of SORNA or these Guidelines, the jurisdiction's submission to the SMART Office should identify these elements and explain why the departure from the SORNA requirements should not be considered a failure to substantially implement SORNA.

Beyond the general standard of substantial implementation, SORNA § 125(b) includes special provisions for cases in which the highest court of a jurisdiction has held that the jurisdiction's constitution is in some respect in conflict with the SORNA requirements. If a jurisdiction believes that it faces such a situation, it should inform the SMART Office. The SMART Office will then work with the jurisdiction to see whether the problem can be overcome, as the statute provides. If it is not possible to overcome the problem, then the SMART Office may approve the jurisdiction's adoption of reasonable alternative measures that are consistent with the purposes of SORNA.

Section 125 of SORNA, as discussed above, provides for a funding reduction for jurisdictions that do not substantially implement SORNA within the applicable time frame. Section 126 of SORNA authorizes positive funding assistance—the Sex Offender Management Assistance (''SOMA'') grant program—to all registration jurisdictions to help offset the costs of SORNA implementation, with enhanced payments authorized for jurisdictions that effect such implementation within one or two years of SORNA's enactment. Congress has not appropriated funding for the SOMA program at the time of the issuance of these Guidelines. If funding for this program is forthcoming in the future, additional guidance will be provided concerning application for grants under the program.

III. Covered Jurisdictions

Section 112(a) of SORNA states that ''[e]ach jurisdiction shall maintain a jurisdiction-wide sex offender registry conforming to the requirements of this title,'' and section 124 provides specific deadlines for ''jurisdictions'' to carry out the SORNA implementation. Related definitions appear in section 111(9) and (10). Section 111(9) provides that ''sex offender registry'' means a registry of sex offenders and a notification program.

Section 111(10) provides that ''jurisdiction'' refers to:

The 50 States;

The District of Columbia;

The five principal U.S. territories—the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the United States Virgin Islands; and

Indian tribes to the extent provided in section 127.

Some of the provisions in SORNA are formulated as directions to sex offenders, including those appearing in sections 113(a)–(b), 113(c) (first sentence), 114(a), 115(a), and 116. Other SORNA provisions are cast as directions to jurisdictions or their officials, such as those appearing in sections 113(c) (second sentence), 113(e), 114(b), 117(a), 118, 121(b), and 122. To meet the requirement under sections 112 and 124 that covered jurisdictions must implement SORNA in their registration and notification programs, each jurisdiction must incorporate in the laws and rules governing its registration and notification program the requirements that SORNA imposes on sex offenders, as well as those that are addressed directly to jurisdictions and their officials.

While the ''jurisdictions'' assigned sex offender registration and notification responsibilities by SORNA are the 50 States, the District of Columbia, the principal territories, and Indian tribes (to the extent provided in section 127), as described above, this does not limit the ability of these jurisdictions to carry out these functions through their political subdivisions or other entities within the jurisdiction. For example, a jurisdiction may assign responsibility for initially registering sex offenders upon their release from imprisonment to correctional personnel who are employees of the jurisdiction's government, but the responsibility for continued tracking and registration of sex offenders thereafter may be assigned to personnel of local police departments, sheriffs' offices, or supervision agencies who are municipal employees. Moreover, in carrying out their registration and notification functions, jurisdictions are free to utilize (and to allow their agencies and political subdivisions to utilize) entities and individuals who may not be governmental agencies or employees in a narrow sense, such as contractors, volunteers, and community-based organizations that are capable of discharging these functions. SORNA does not limit jurisdictions' discretion concerning such matters. Rather, so long as a jurisdiction's laws and rules provide consistently for the discharge of the required registration and notification functions by some responsible individuals or entities, the specifics concerning such assignments of responsibility are matters within the jurisdiction's discretion. References in these Guidelines should be understood accordingly, so that (for example) a reference to an ''official'' carrying out a registration function does not mean that the function must be carried out by a government employee, but rather is simply a way of referring to whatever

individual is assigned responsibility for the function.

With respect to Indian tribes, SORNA recognizes that tribes may vary in their capacities and preferences regarding the discharge of sex offender registration and notification functions, and accordingly section 127 of SORNA has special provisions governing the treatment of Indian tribes as registration jurisdictions or the delegation of registration and notification functions to the states. Specifically, section 127(a)(1) generally afforded federally recognized Indian tribes a choice between electing to carry out the sex offender registration and notification functions specified in SORNA in relation to sex offenders subject to its jurisdiction, or delegating those functions to a state or states within which the tribe is located. SORNA provided a period of one year commencing with SORNA's enactment on July 27, 2006 for tribes to make this choice. SORNA further required that the election to become a SORNA registration jurisdiction, or to delegate to a state or states, be made by resolution or other enactment of the tribal council or comparable governmental body. Hence, the decision must have been made by a tribal governmental entity—''the tribal council or comparable governmental body''—that has the legal authority to make binding legislative decisions for the tribe. (However, delegation to the state or states is automatic for a tribe subject to state law enforcement jurisdiction under 18 U.S.C. 1162, and for a tribe that did not affirmatively elect to become a SORNA registration jurisdiction on or prior to July 27, 2007—see the discussion of section 127(a)(2) below.)

If a tribe has elected to be a SORNA registration jurisdiction in conformity with section 127, its functions and responsibilities regarding sex offender registration and notification are the same as those of a state. Duplication of registration and notification functions by tribes and states is not required, however, and such tribes may enter into cooperative agreements with the states for the discharge of these functions, as discussed below in connection with section 127(b).

If a tribe has elected to delegate to a state—or if a delegation to the state occurs pursuant to section 127(a)(2)—then the state is fully responsible for carrying out the SORNA registration and notification functions, and the delegation includes an undertaking by the tribe to ''provide access to its territory and such other cooperation and assistance as may be needed to enable [the state] to carry out and enforce the requirements of [SORNA].'' SORNA § 127(a)(1)(B). This does not mean, however, that tribal authorities in such a tribe are precluded from carrying out sex offender registration and notification functions. Sovereign powers that these tribes otherwise possess to prescribe registration and notification requirements for sex offenders subject to their jurisdiction are not restricted by SORNA, so long as there is no conflict with the state's discharge of its responsibilities under SORNA. Moreover, as discussed above, states generally have discretion concerning the entities within the state through which the SORNA registration and notification functions are to be carried out, and tribal entities are not excluded. For example, with respect to a tribe subject to state law enforcement jurisdiction under 18 U.S.C. 1162, the state may conclude that a tribal agency is best situated to carry out registration functions with respect to sex offenders residing in the tribe's territory. In some instances such tribes may have been operating sex offender registration programs of their own prior to the enactment of SORNA, and arranging with the tribe for the continued discharge of registration functions by the tribal authorities may be the most expedient way for the state to carry out the required SORNA functions in such a tribal area.

Section 127(a)(2) of SORNA specifies three circumstances in which registration and notification functions are deemed to be delegated to the state or states in which a tribe is located, even if the tribe did not make an affirmative decision to delegate:

Under subparagraph (A) of subsection (a)(2), these functions are always delegated to the state if the tribe is subject to the law enforcement jurisdiction of the state under 18 U.S.C. 1162. (If a tribe's land is in part subject to state law enforcement jurisdiction under 18 U.S.C. 1162 and in part outside of the areas subject to 18 U.S.C. 1162, then: (i) Sex offender registration and notification functions are automatically delegated to the relevant state in the portion of the tribal land subject to 18 U.S.C. 1162, and (ii) the tribe could have made an election between functioning as a registration jurisdiction or delegating registration and notification functions to the state in the portion of its land that is not subject to 18 U.S.C. 1162.)

Under subparagraph (B) of subsection (a)(2), these functions are delegated to the state or states if the tribe did not make an affirmative election to function as a registration jurisdiction within one year of the enactment of SORNA—i.e., within one year of July 27, 2006—or rescinds a previous election to function as a registration jurisdiction. Under subparagraph (C) of subsection (a)(2), these functions are delegated to the state or states if the Attorney General determines that the tribe has not substantially implemented the requirements of SORNA and is not likely to become capable of doing so within a reasonable amount of time.

If a tribe did elect under section 127 to become a SORNA registration jurisdiction, section 127(b) specifies that this does not mean that the tribe must duplicate registration and notification functions that are fully carried out by the state or states within which the tribe is located, and subsection (b) further authorizes the tribes and the states to make cooperative arrangements for the discharge of some or all of these functions. For example, SORNA § 118 requires jurisdictions to make information concerning their sex offenders available to the public through the Internet. If a tribe did not want to maintain a separate sex offender Web site for this purpose, it would not need to do so, as long as a cooperative agreement was made with the state to have information concerning the tribe's registrants posted on the state's sex offender Web site. Likewise, a tribe that has elected to be a SORNA registration jurisdiction remains free to make cooperative agreements under which the state (or a political subdivision thereof) will handle registration of the tribe's sex offenders—such as initially registering these sex offenders, conducting periodic appearances of the sex offenders to verify the registration information, and receiving reports by the sex offenders concerning changes in the registration information—to the extent and in a manner mutually agreeable to the tribe and the state. In general, the use of cooperative agreements affords tribes flexibility in deciding which functions under SORNA they would seek to have state authorities perform, and which they wish to control or discharge directly. For example, the state could carry out certain registration functions, but the tribe could retain jurisdiction over the arrest within its territory of sex offenders who fail to register, update registrations, or make required verification appearances, if a cooperative agreement between the tribe and the state so provided.

Tribes that have elected to be SORNA registration jurisdictions in conformity with section 127 may also make agreements or enter into arrangements with other such tribes for the cooperative or shared discharge of registration and notification functions.

For example, a group of tribes with adjacent territories might wish to enter into an agreement under which the participating tribes contribute resources and information to the extent of their capacities, but the tribal police department (or some other agency) of one of the tribes in the group has primary responsibility for the discharge of the SORNA registration functions in relation to sex offenders subject to the jurisdiction of any of the tribes in the group—such as initially registering sex offenders who enter the jurisdiction of any of the tribes, receiving information from those sex offenders concerning subsequent changes in residence or other registration information, and conducting periodic in-person appearances by the registrants to verify and update the registration information, as SORNA requires. Likewise, with respect to maintenance of Web sites providing public access to sex offender information, as required by SORNA § 118, tribes could enter into agreements or arrangements among themselves for the shared administration or operation of Web sites covering the sex offenders of the participating tribes. So long as such agreements or arrangements among tribes are designed to ensure that the SORNA registration and notification functions are carried out consistently in relation to sex offenders subject to the jurisdiction of any of the participating tribes, discharge of the SORNA responsibilities by such means will be considered as satisfying the SORNA substantial implementation standard.

IV. Covered Sex Offenses and Sex Offenders

SORNA refers to the persons required to register under its standards as ''sex offenders,'' and section 111(1) of SORNA defines ''sex offender'' in the relevant sense to mean ''an individual who was convicted of a sex offense.'' ''Sex offense'' is in turn defined in section 111(5) and related provisions. The term encompasses a broad range of offenses of a sexual nature under the law of any jurisdiction—including offenses under federal, military, state, territorial, local, tribal, and foreign law, but with some qualification regarding foreign convictions as discussed below.

A. Convictions Generally

A ''sex offender'' as defined in SORNA § 111(1) is a person who was ''convicted'' of a sex offense. Hence, whether an individual has a sex offense ''conviction'' determines whether he or she is within the minimum categories for which the SORNA standards require registration.

Because the SORNA registration requirements are predicated on convictions, registration (or continued registration) is normally not required under the SORNA standards if the predicate conviction is reversed, vacated, or set aside, or if the person is pardoned for the offense on the ground of innocence. This does not mean, however, that nominal changes or terminological variations that do not relieve a conviction of substantive effect negate the SORNA requirements. For example, the need to require registration would not be avoided by a jurisdiction's having a procedure under which the convictions of sex offenders in certain categories (e.g., young adult sex offenders who satisfy certain criteria) are referred to as something other than ''convictions,'' or under which the convictions of such sex offenders may nominally be ''vacated'' or ''set aside,'' but the sex offender is nevertheless required to serve what amounts to a criminal sentence for the offense. Rather, an adult sex offender is ''convicted'' for SORNA purposes if the sex offender remains subject to penal consequences based on the conviction, however it may be styled. Likewise, the sealing of a criminal record or other action that limits the publicity or availability of a conviction, but does not deprive it of continuing legal validity, does not change its status as a ''conviction'' for purposes of SORNA.

''Convictions'' for SORNA purposes include convictions of juveniles who are prosecuted as adults. It does not include juvenile delinquency adjudications, except under the circumstances specified in SORNA § 111(8). Section 111(8) provides that delinquency adjudications count as convictions ''only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of title 18, United States Code), or was an attempt or conspiracy to commit such an offense.''

Hence, SORNA does not require registration for juveniles adjudicated delinquent for all sex offenses for which an adult sex offender would be required to register, but rather requires registration only for a defined class of older juveniles who are adjudicated delinquent for committing particularly serious sexually assaultive crimes (or attempts or conspiracies to commit such crimes). Considering the relevant aspects of the federal ''aggravated sexual abuse'' offense referenced in section 111(8), it suffices for substantial implementation if a jurisdiction applies SORNA's requirements to juveniles at least 14 years old at the time of the offense who are adjudicated delinquent for committing (or attempting or conspiring to commit) offenses under laws that cover:

Engaging in a sexual act with another by force or the threat of serious violence; or

Engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim.

''Sexual act'' for this purpose should be understood to include any degree of genital or anal penetration, and any oral-genital or oral-anal contact. This follows from the relevant portions of the definition of sexual act in 18 U.S.C. 2246(2), which applies to the 18 U.S.C. 2241 ''aggravated sexual abuse'' offense. (The summary of comments received on these Guidelines as initially proposed for public comment may be consulted for further explanation concerning this understanding of the requirements for substantial implementation of section 111(8).)

As with other aspects of SORNA, the foregoing defines minimum standards. Hence, the inclusions and exclusions in the definition of ''conviction'' for purposes of SORNA do not constrain jurisdictions from requiring registration by additional individuals—e.g., more broadly defined categories of juveniles adjudicated delinquent for sex offenses—if they are so inclined.

B. Foreign Convictions

Section 111(5)(B) of SORNA instructs that registration need not be required on the basis of a foreign conviction if the conviction ''was not obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established [by the Attorney General].'' The following standards are adopted pursuant to section 111(5)(B):

Sex offense convictions under the laws of Canada, United Kingdom, Australia, and New Zealand are deemed to have been obtained with sufficient safeguards for fundamental fairness and due process, and registration must be required for such convictions on the same footing as domestic convictions.

Sex offense convictions under the laws of any foreign country are deemed to have been obtained with sufficient safeguards for fundamental fairness and due process if the U.S. State Department, in its Country Reports on Human Rights Practices, has concluded that an independent judiciary generally (or vigorously) enforced the right to a fair trial in that country during the year in which the conviction occurred. Registration must be required on the

basis of such convictions on the same footing as domestic convictions.

With respect to sex offense convictions in foreign countries that do not satisfy the criteria stated above, a jurisdiction is not required to register the convicted person if the jurisdiction determines—through whatever process or procedure it may choose to adopt—that the conviction does not constitute a reliable indication of factual guilt because of the lack of an impartial tribunal, because of denial of the right to respond to the evidence against the person or to present exculpatory evidence, or because of denial of the right to the assistance of counsel.

The foregoing standards do not mean that jurisdictions must incorporate these particular criteria or procedures into their registration systems. Jurisdictions may wish to register all foreign sex offense convicts, or to register such convicts with fewer qualifications or limitations than those allowed under the standards set forth above. The stated criteria only define the minimum categories of foreign convicts for whom registration is required for compliance with SORNA, and as is generally the case under SORNA, jurisdictions are free to require registration more broadly than the SORNA minimum.

C. Sex Offenses Generally

The general definition of sex offenses for which registration is required under the SORNA standards appears in section 111(5)(A). The clauses in the definition cover the following categories of offenses:

Sexual Act and Sexual Contact Offenses (§ 111(5)(A)(i)): The first clause in the definition covers ''a criminal offense that has an element involving a sexual act or sexual contact with another.'' (''Criminal offense'' in the relevant sense refers to offenses under any body of criminal law, including state, local, tribal, foreign, military, and other offenses, as provided in section 111(6).) The offenses covered by this clause should be understood to include all sexual offenses whose elements involve: (i) Any type or degree of genital, oral, or anal penetration, or (ii) any sexual touching of or contact with a person's body, either directly or through the clothing. *Cf.* 18 U.S.C. 2246(2)–(3) (federal law definitions of sexual act and sexual contact).

Specified Offenses Against Minors (§ 111(5)(A)(ii)): The second clause in the definition covers ''a criminal offense that is a specified offense against a minor.'' The statute provides a detailed definition of ''specified offense against a minor'' in section 111(7), which is discussed separately below.

Specified Federal Offenses (§ 111(5)(A)(iii)): The third clause covers most sexual offenses under federal law. The clause identifies chapters and offense provisions in the federal criminal code by citation.

Specified Military Offenses (§ 111(5)(A)(iv)): The fourth clause covers sex offenses under the Uniform Code of Military Justice, as specified by the Secretary of Defense.

Attempts and Conspiracies (§ 111(5)(A)(v)): The final clause in the definition covers attempts and conspiracies to commit offenses that are otherwise covered by the definition of ''sex offenses.'' This includes both offenses prosecuted under general attempt or conspiracy provisions, where the object offense falls under the SORNA ''sex offense'' definition, and particular offenses that are defined as, or in substance amount to, attempts or conspiracies to commit offenses that are otherwise covered. For example, in the latter category, a jurisdiction may define an offense of ''assault with intent to commit rape.'' Whether or not the word ''attempt'' is used in the definition of the offense, this is in substance an offense that covers certain attempts to commit rapes and hence is covered under the final clause of the SORNA definition.

SORNA § 111(5)(C) qualifies the foregoing definition of ''sex offense'' to exclude ''[a]n offense involving consensual sexual conduct * * * if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.'' The general exclusion with respect to consensual sexual offenses involving adult victims means, for example, that a jurisdiction does not have to require registration based on prostitution offenses that consist of the offender paying or receiving payment from an adult for a sexual act between them (unless the victim is under the custodial authority of the offender). The exclusion for certain cases involving child victims based on victim age and age difference means that a jurisdiction may not have to require registration in some cases based on convictions under provisions that prohibit sexual acts or contact (even if consensual) with underage persons. For example, under the laws of some jurisdictions, an 18-year-old may be criminally liable for engaging in consensual sex with a 15-year-old. The jurisdiction would not have to require registration in such a case to comply with the SORNA standards, since the victim was at least 13 and the offender was not more than four years older.

D. Specified Offenses Against Minors

The offenses for which registration is required under the SORNA standards include any ''specified offense against a minor'' as defined in section 111(7). The SORNA § 111(7) definition of specified offense against a minor covers any offense against a minor—i.e., a person under the age of 18, as provided in section 111(14)—that involves any of the following:

Kidnapping or False Imprisonment of a Minor (§ 111(7)(A)–(B)): These clauses cover ''[a]n offense (unless committed by a parent or guardian) involving kidnapping [of a minor]'' and ''[a]n offense (unless committed by a parent or guardian) involving false imprisonment [of a minor].'' The relevant offenses are those whose gravamen is abduction or unlawful restraint of a person, which go by different names in different jurisdictions, such as ''kidnapping,'' ''criminal restraint,'' or ''false imprisonment.'' Jurisdictions can implement the offense coverage requirement of these clauses by requiring registration for persons convicted of offenses of this type (however designated) whose victims were below the age of 18. It is left to jurisdictions' discretion under these clauses whether registration should be required for such offenses in cases where the offender is a parent or guardian of the victim.

Solicitation of a Minor to Engage in Sexual Conduct (§ 111(7)(C)): This clause covers ''[s]olicitation [of a minor] to engage in sexual conduct.'' ''Solicitation'' under this clause and other SORNA provisions that use the term should be understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct. ''Sexual conduct'' should be understood to refer to any sexual activity involving physical contact. (See the discussion later in this list of ''criminal sexual conduct'' under section 111(7)(H).) Hence, jurisdictions can implement the offense coverage requirement under this clause by requiring registration, in cases where the victim was below the age of 18, based on:

Any conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the elements of the object offense include sexual activity involving physical contact, and

Any conviction for an offense involving solicitation of the victim under any provision defining a

particular crime whose elements include soliciting or attempting to engage in sexual activity involving physical contact.

Use of a Minor in a Sexual Performance (§ 111(7)(D)): This clause covers offenses involving ''[u]se [of a minor] in a sexual performance.'' That includes both live performances and using minors in the production of pornography, and has some overlap with section 111(7)(G), which expressly covers child pornography offenses.

Solicitation of a Minor to Practice Prostitution (§ 111(7)(E)): This clause covers offenses involving ''[s]olicitation [of a minor] to practice prostitution.'' Jurisdictions can implement the offense coverage requirement under this clause by requiring registration, in cases where the victim was below the age of 18, based on:

Any conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the object offense is a prostitution offense, and

Any conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to get a person to engage in prostitution.

Video Voyeurism Involving a Minor (§ 111(7)(F)): This clause covers ''[v]ideo voyeurism as described in section 1801 of title 18, United States Code [against a minor].'' The cited federal offense in essence covers capturing the image of a private area of another person's body, where the victim has a reasonable expectation of privacy against such conduct. Jurisdictions can implement the offense coverage requirement under this clause by requiring registration for offenses of this type, in cases where the victim was below the age of 18.

Possession, Production, or Distribution of Child Pornography (§ 111(7)(G)): This clause covers ''possession, production, or distribution of child pornography.'' Jurisdictions can implement the offense coverage requirement under this clause by requiring registration for offenses whose gravamen is creating or participating in the creation of sexually explicit visual depictions of persons below the age of 18, making such depictions available to others, or having or receiving such depictions.

Criminal Sexual Conduct Involving a Minor and Related Internet Activities (§ 111(7)(H)): This clause covers ''[c]riminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.'' The definition has two parts:

The ''criminal sexual conduct involving a minor'' language in this definition covers sexual offenses whose elements involve physical contact with the victim—such as provisions defining crimes of ''rape,'' ''sexual assault,'' ''sexual abuse,'' or ''incest''—in cases where the victim was below 18 at the time of the offense. In addition, it covers offenses whose elements involve using other persons in prostitution—such as provisions defining crimes of ''pandering,'' ''procuring,'' or ''pimping''—in cases where the victim was below 18 at the time of the offense. Coverage is not limited to cases where the victim's age is an element of the offense, such as prosecution for specially defined child molestation or child prostitution offenses. Jurisdictions can implement the offense coverage requirement under the ''criminal sexual conduct involving a minor'' language of this clause by requiring registration for ''criminal sexual conduct'' offenses as described above whenever the victim was in fact below the age of 18 at the time of the offense. (Section 111(7)(C) and (E) separately require coverage of offenses involving solicitation of a minor to engage in sexual conduct or to practice prostitution, but registration must be required for offenses involving sexual conduct with a minor or the use of a minor in prostitution in light of section 111(7)(H), whether or not the offense involves ''solicitation'' of the victim.) Jurisdictions can implement the ''use of the Internet to facilitate or attempt such conduct'' part of this definition by requiring registration for offenses that involve use of the Internet in furtherance of criminal sexual conduct involving a minor as defined above, such as attempting to lure minors through Internet communications for the purpose of sexual activity.

Conduct by Its Nature a Sex Offense Against a Minor (§ 111(7)(I)): The final clause covers ''[a]ny conduct that by its nature is a sex offense against a minor.'' It is intended to ensure coverage of convictions under statutes defining sexual offenses in which the status of the victim as a minor is an element of an offense, such as specially defined child molestation or child prostitution offenses, and other offenses prohibiting sexual activity with underage persons. Jurisdictions can comply with the offense coverage requirement under this clause by including convictions for such offenses in their registration requirements.

E. Protected Witnesses

The requirement that jurisdictions substantially implement SORNA does not preclude their taking measures needed to protect the security of individuals who have been provided new identities and relocated under the federal witness security program (*see* 18 U.S.C. 3521 *et seq.*) or under other comparable witness security programs operated by non-federal jurisdictions. A jurisdiction may conclude that it is necessary to exclude an individual afforded protection in such a program from its sex offender registry or from public notification for security reasons, though the individual otherwise satisfies the criteria for registration and notification under SORNA. Alternatively, the jurisdiction may choose not to waive registration but may identify the registrant in the registration system records only by his or her new identity or data, if such modifications can be so devised that they are not transparent and do not permit the registrant's original identity or participation in a witness security program to be inferred. Jurisdictions are permitted and encouraged to make provision in their laws and procedures to accommodate consideration of the security of such individuals and to honor requests from the United States Marshals Service and other agencies responsible for witness protection in order to ensure that their original identities are not compromised.

With respect to witnesses afforded federal protection, 18 U.S.C. 3521(b)(1)(H) specifically authorizes the Attorney General to ''protect the confidentiality of the identity and location of persons subject to registration requirements as convicted offenders under Federal or State law, including prescribing alternative procedures to those otherwise provided by Federal or State law for registration and tracking of such persons.'' U.S. Department of Justice Witness Security Program officials accordingly determine on a case-by-case basis whether such witnesses will be required to register, and if registration occurs, whether it will utilize new identities, modified data, or other special conditions or procedures that are warranted to avoid jeopardizing the safety of the protected witnesses.

V. Classes of Sex Offenders

Section 111(2)–(4) of SORNA defines three ''tiers'' of sex offenders. The tier classifications have implications in three areas: (i) Under section 115, the required duration of registration depends primarily on the tier; (ii) under section 116, the required frequency of in-person appearances by sex offenders to verify registration information depends on the tier; and (iii) under section 118(c)(1), information about tier

I sex offenders convicted of offenses other than specified offenses against a minor may be exempted from Web site disclosure.

The use of the ''tier'' classifications in SORNA relates to substance, not form or terminology. Thus, to implement the SORNA requirements, jurisdictions do not have to label their sex offenders as ''tier I,'' ''tier II,'' and ''tier III,'' and do not have to adopt any other particular approach to labeling or categorization of sex offenders. Rather, the SORNA requirements are met so long as sex offenders who satisfy the SORNA criteria for placement in a particular tier are consistently subject to at least the duration of registration, frequency of in-person appearances for verification, and extent of website disclosure that SORNA requires for that tier.

For example, suppose that a jurisdiction decides to subject all sex offenders to lifetime registration, quarterly verification appearances, and full website posting as described in Part VII of these Guidelines. That would meet the SORNA requirements with respect to sex offenders satisfying the ''tier III'' criteria, and exceed the minimum required by SORNA with respect to sex offenders satisfying the ''tier II'' or ''tier I'' criteria. Hence, such a jurisdiction would be able to implement the SORNA requirements with respect to all sex offenders without any labeling or categorization, and without having to assess individual registrants against the tier criteria in the SORNA definitions. Likewise, any other approach a jurisdiction may devise is acceptable if it ensures that sex offenders satisfying the criteria for each SORNA tier are subject to duration of registration, appearance frequency, and website disclosure requirements that meet or exceed those SORNA requires for the tier.

Turning to the specific tier definitions, SORNA § 111(2) defines ''tier I sex offender'' to mean ''a sex offender other than a tier II or tier III sex offender.'' Thus, tier I is a residual class that includes all sex offenders who do not satisfy the criteria for tier II or tier III. For example, tier I includes a sex offender whose registration offense is not punishable by imprisonment for more than one year, a sex offender whose registration offense is the receipt or possession of child pornography, and a sex offender whose registration offense is a sexual assault against an adult that involves sexual contact but not a completed or attempted sexual act. (With respect to the last-mentioned category, a sexual assault involving a completed or attempted sexual act would generally result in a tier III classification, as discussed below in connection with SORNA § 111(4)(A)(i)), but the offense coverage specifications for tier II and tier III do not otherwise provide a basis for higher classification of sexual contact or touching offenses involving adult victims.)

The definitions of tier II and tier III—in section 111(3) and 111(4) respectively—are both limited to cases in which the offense for which the sex offender is required to register ''is punishable by imprisonment for more than 1 year.'' This means that the statutory maximum penalty possible for the offense exceeds one year. It does not mean that inclusion in these tiers is limited to cases in which the sex offender is actually sentenced to more than a year of imprisonment.

Because the definitions of tier II and tier III are limited to certain offenses punishable by imprisonment for more than one year, and federal law does not permit imprisonment for more than one year based on Indian tribal court convictions, all tribal court convictions are tier I offenses. However, sex offenses prosecuted in tribal courts may be serious crimes that would typically carry higher penalties if prosecuted in non-tribal jurisdictions. As the incidents of the tier classifications under SORNA only define minimum standards, tribal jurisdictions and other jurisdictions are free to premise more extensive registration and notification requirements on tribal court convictions than the minimum SORNA requires for tier I offenders, and may wish to do so considering the substantive nature of the offense or other factors.

Regardless of which jurisdiction convicts the sex offender, the requirements with respect to the potential length of imprisonment under the statute relate to individual offenses rather than to aggregate penalties. For example, suppose that a sex offender is charged in three counts with the commission of sex offenses each of which is punishable by at most one year of imprisonment, and upon conviction is sentenced to three consecutive terms of six months of incarceration. Though the aggregate penalty is 18 months, these convictions do not place the sex offender above tier I, because each offense was not punishable by more than one year of imprisonment.

The classification of sex offenders as tier II or tier III under SORNA depends in part on the nature of the offense for which the sex offender is required to register. In assessing whether the offense satisfies the criteria for tier II or tier III classification, jurisdictions generally may premise the determination on the elements of the offense, and are not required to look to underlying conduct that is not reflected in the offense of conviction. However, where the tier classification depends on commission of an offense against a victim who is below a certain age, the requirement to give weight to this factor (victim age) is not limited to cases involving convictions for offenses whose elements specify that the victim must be below that age. Rather, the requirement applies as well in cases in which the offender is convicted of a more generally defined offense that may be committed against victims of varying ages, if the victim was in fact below the relevant age. For example, in a case in which the sex offender was convicted of a generally defined ''sexual contact'' offense, whose elements include no specification as to victim age, tier II treatment is required if the victim was in fact below 18 (SORNA § 111(3)(A)(iv)), and tier III treatment is required if the victim was in fact below 13 (SORNA § 111(4)(A)(ii)).

Beyond the requirement of an offense punishable by imprisonment for more than one year, the specific offense-related criteria for tier II are that the registration offense falls within one of two lists. In general terms, these lists cover most sexual abuse or exploitation offenses against minors. (Here as elsewhere in SORNA, ''minor'' means a person under the age of 18—see SORNA § 111(14).) The first list, appearing in section 111(3)(A), covers offenses committed against minors that are comparable to or more severe than a number of cited federal offenses—those under 18 U.S.C. 1591, 2422(b), 2423(a), and 2244—and attempts and conspiracies to commit such offenses. The second list, appearing in section 111(3)(B), covers use of a minor in a sexual performance, solicitation of a minor to practice prostitution, and production or distribution of child pornography. Determining whether a jurisdiction's offenses satisfy the criteria for this tier is simplified by recognizing that the various cited and described offenses essentially cover:

Offenses involving the use of minors in prostitution, and inchoate or preparatory offenses (including attempts, conspiracies, and solicitations) that are directed to the commission of such offenses;

Offenses against minors involving sexual contact—i.e., any sexual touching of or contact with the intimate parts of the body, either directly or through the clothing—and inchoate or preparatory offenses (including attempts, conspiracies, and solicitations) that are directed to the commission of such offenses;

Offenses involving use of a minor in a sexual performance; and

Offenses involving the production or distribution of child pornography, i.e., offenses whose gravamen is creating or participating in the creation of sexually explicit visual depictions of minors or making such depictions available to others.

Hence, jurisdictions can implement the relevant SORNA requirements by according ''tier II'' treatment to sex offenders convicted of offenses of these four types.

The corresponding offense coverage specifications for ''tier III'' in section 111(4)(A)–(B) cover offenses punishable by more than one year of imprisonment in the following categories:

Offenses comparable to or more severe than aggravated sexual abuse or sexual abuse as described in 18 U.S.C. 2241 and 2242, or an attempt or conspiracy to commit such an offense (*see* SORNA § 111(4)(A)(i)). Considering the definitions of the cited federal offenses, comparable offenses under the laws of other jurisdictions would be those that cover:

Engaging in a sexual act with another by force or threat (*see* 18 U.S.C. 2241(a), 2242(1));

Engaging in a sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate (*see* 18 U.S.C. 2241(b), 2242(2)); or

Engaging in a sexual act with a child under the age of 12 (*see* 18 U.S.C. 2241(c)). Considering the related definition in 18 U.S.C. 2246(2), ''sexual act'' for this purpose would include: (i) Oral-genital or oral-anal contact, (ii) any degree of genital or anal penetration, and (iii) direct genital touching of a child under the age of 16. Offenses against a minor below the age of 13 that are comparable to or more severe than abusive sexual contact as defined in 18 U.S.C. 2244, or an attempt or conspiracy to commit such an offense (*see* SORNA § 111(4)(A)(ii)). Considering the definitions of the federal offenses in 18 U.S.C. 2244 and the related definition in 18 U.S.C. 2246(3), comparable offenses under the laws of other jurisdictions would be those that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing, where the victim is under 13.

Kidnapping of a minor (unless committed by a parent or guardian).

Hence, jurisdictions can implement the relevant SORNA requirements by according ''tier III'' treatment to sex offenders convicted of offenses of these three types.

In addition to including criteria relating to the nature of the registration offense, the definitions of tier II and tier III accord significance to a registrant's history of recidivism. Specifically, section 111(3)(C) places in tier II any sex offender whose registration offense is punishable by imprisonment for more than one year, where that offense ''occurs after the offender becomes a tier I sex offender.'' Thus, any sex offender whose registration offense is punishable by more than one year of imprisonment who has a prior sex offense conviction is at least in tier II. Likewise, section 111(4)(C) places in tier III any sex offender whose registration offense is punishable by imprisonment for more than one year, where that offense ''occurs after the offender becomes a tier II sex offender.'' Thus, any sex offender whose registration offense is punishable by more than one year of imprisonment, and who at the time of that offense already satisfied the criteria for inclusion in tier II, is in tier III.

In determining tier enhancements based on recidivism, prior convictions must be taken into account regardless of when they occurred, including convictions occurring prior to the enactment of SORNA or its implementation in a particular jurisdiction. For example, consider an individual who was previously convicted for committing a sexual contact offense (punishable by more than a year of imprisonment) against a 13-year-old victim in 2000, and who is subsequently convicted for committing a sexual contact offense (punishable by more than a year of imprisonment) against a 14-year-old victim in 2010. While the later offense would not in itself support tier III classification on the basis of section 111(4)(A)(ii), since the victim was not below 13, tier III treatment would nevertheless be required on the ground of recidivism, since the earlier offense satisfied the criterion for tier II classification under section 111(3)(A)(iv). It may not always be possible, however, to obtain a complete record of an offender's prior convictions, particularly when they occurred many years or decades ago, and available criminal history information may be uninformative as to factors such as victim age that can affect the SORNA tier classification. Jurisdictions may rely on the methods and standards they normally use in searching criminal records and on the information appearing in the records so obtained in assessing SORNA tier enhancements based on recidivism.

In applying the SORNA tier definitions, it should be kept in mind that their significance under SORNA is in determining the extent of registration and notification requirements for offenders within the SORNA registration categories, and that they do not constitute independent requirements for jurisdictions to register offenders for whom SORNA does not otherwise require registration. In particular, the class of juvenile delinquents who are required to register under SORNA is defined by section 111(8), a class that is narrower in a number of respects than the class of offenders who satisfy the criteria for tier III classification under section 111(4). (See the discussion of section 111(8) in Part IV.A of these Guidelines above.) Hence, a juvenile delinquent's satisfaction of the criteria for tier III classification under section 111(4) does not in itself mean that a jurisdiction must require the juvenile to register in order to comply with SORNA. Rather, that is only the case if the juvenile satisfies the criteria for required registration of juvenile delinquents under section 111(8).

VI. Required Registration Information

Section 114 of SORNA defines the required minimum informational content of sex offender registries. It is divided into two lists. The first list, set forth in subsection (a) of section 114, describes information that the registrant will normally be in a position to provide. The second list, set forth in subsection (b), describes information that is likely to require some affirmative action by the jurisdiction to obtain, beyond asking the sex offender for the information. Supplementary to the information that the statute explicitly describes, section 114(a)(7) and (b)(8) authorize the Attorney General to specify additional information that must be obtained and included in the registry. This expansion authority is utilized to require including in the registries a number of additional types of information, such as information about registrants' e-mail addresses, telephone numbers, and the like, information concerning the whereabouts of registrants who lack fixed abodes or definite places of employment, and information about temporary lodging, as discussed below.

Whether a type of information must be obtained by a jurisdiction and included in its sex offender registry is a distinct question from whether the jurisdiction must make that information available to the public. Many of the informational items whose inclusion in the registry is required by section 114

and these Guidelines are not subject to a public disclosure requirement under SORNA, and some are exempt from public disclosure on a mandatory basis. The public disclosure requirements under SORNA and exceptions thereto are explained in Part VII of these Guidelines.

In order to implement requirements for the sharing of registration information appearing in other sections of SORNA (sections 113(c), 119(b), 121(b)—see Parts VII and X of these Guidelines for discussion), jurisdictions will need to maintain all required registration information in digitized form that will enable it to be immediately accessed by or transmitted to various entities. Hence, the jurisdiction's registry must be an electronic database, and descriptions of required types of information in section 114 should consistently be understood as referring to digitizable information rather than hard copies or physical objects. This does not mean, however, that all required registration information must be reproduced in a single segregated database, since the same effect may be achieved by including in the central registry database links or identification numbers that provide access to the information in other databases in which it is included (e.g., with respect to criminal history, fingerprint, and DNA information). These points are further discussed in connection with the relevant informational items.

As with SORNA's requirements generally, the informational requirements of section 114 and these Guidelines define a floor, not a ceiling, for jurisdictions' registries. Hence, jurisdictions are free to obtain and include in their registries a broader range of information than the minimum requirements described in this Part.

The required minimum informational content for sex offender registries is as follows:

Name, Aliases, and Remote Communication Identifiers and Addresses (§ 114(a)(1), (a)(7)):

Names and Aliases (§ 114(a)(1)): The registry must include ''[t]he name of the sex offender (including any alias used by the individual).'' The names and aliases required by this provision include, in addition to registrants' primary or given names, nicknames and pseudonyms generally, regardless of the context in which they are used, any designations or monikers used for self-identification in Internet communications or postings, and ethnic or tribal names by which they are commonly known.

Internet Identifiers and Addresses (§ 114(a)(7)): In the context of Internet communications there may be no clear line between names or aliases that are required to be registered under SORNA § 114(a)(1) and addresses that are used for routing purposes. Moreover, regardless of the label, including in registries information on designations used by sex offenders for purposes of routing or self-identification in Internet communications—e.g., e-mail and instant messaging addresses—serves the underlying purposes of sex offender registration and notification. Among other potential uses, having this information may help in investigating crimes committed online by registered sex offenders—such as attempting to lure children or trafficking in child pornography through the Internet—and knowledge by sex offenders that their Internet identifiers are known to the authorities may help to discourage them from engaging in such criminal activities. The authority under section 114(a)(7) is accordingly exercised to require that the information included in the registries must include all designations used by sex offenders for purposes of routing or self-identification in Internet communications or postings.

Telephone Numbers (§ 114(a)(7)): Requiring sex offenders to provide their telephone numbers (both for fixed location phones and cell phones) furthers the objectives of sex offender registration. One obvious purpose in having such information is to facilitate communication between registration personnel and a sex offender in case issues arise relating to the sex offender's registration. Moreover, as communications technology advances, the boundaries blur between text-based and voice-based communications media. Telephone calls may be transmitted through the Internet. Text messages may be sent between cell phones. Regardless of the particular communication medium, and regardless of whether the communication involves text or voice, sex offenders may potentially utilize remote communications in efforts to contact or lure potential victims. Hence, including phone numbers in the registration information may help in investigating crimes committed by registrants that involved telephonic communication with the victim, and knowledge that their phone numbers are known to the authorities may help sex offenders to resist the temptation to commit crimes by this means. The authority under section 114(a)(7) is accordingly exercised to require that the information included in the registries must include sex offenders' telephone numbers and any other designations used by sex offenders for purposes of routing or self-identification in telephonic communications.

Social Security Number (§ 114(a)(2), (a)(7)): The registry must include ''[t]he Social Security number of the sex offender.'' In addition to any valid Social Security number issued to the registrant by the government, the information the jurisdiction requires registrants to provide under this heading must include any number that the registrant uses as his or her purported Social Security number since registrants may, for example, attempt to use false Social Security numbers in seeking employment that would provide access to children. To the extent that purported (as opposed to actual) Social Security numbers may be beyond the scope of the information required by section 114(a)(2), the authority under section 114(a)(7) is exercised to require that information on such purported numbers be obtained and included in the registry as well.

Residence, Lodging, and Travel Information (§ 114(a)(3), (a)(7)):

Residence Address (§ 114(a)(3)): The registry must include ''the address of each residence at which the sex offender resides or will reside.'' As provided in SORNA § 111(13), residence refers to ''the location of the individual's home or other place where the individual habitually lives.'' (For more as to the meaning of ''resides'' under SORNA, see Part VIII of these Guidelines.) The statute refers to places in which the sex offender ''will reside'' so as to cover situations in which, for example, a sex offender is initially being registered prior to release from imprisonment, and hence is not yet residing in the place or location to which he or she expects to go following release.

Other Residence Information (§ 114(a)(7)): Sex offenders who lack fixed abodes are nevertheless required to register in the jurisdictions in which they reside, as discussed in Part VIII of these Guidelines. Such sex offenders cannot provide the residence address required by section 114(a)(3) because they have no definite ''address'' at which they live. Nevertheless, some more or less specific description should normally be obtainable concerning the place or places where such a sex offender habitually lives—e.g., information about a certain part of a city that is the sex offender's habitual locale, a park or spot on the street (or a number of such places) where the sex offender stations himself during the day or sleeps at night, shelters among which the sex offender circulates, or places in public

buildings, restaurants, libraries, or other establishments that the sex offender frequents. Having this type of location information serves the same public safety purposes as knowing the whereabouts of sex offenders with definite residence addresses. Hence, the authority under SORNA § 114(a)(7) is exercised to require that information be obtained about where sex offenders who lack fixed abodes habitually live with whatever definiteness is possible under the circumstances. Likewise, in relation to sex offenders who lack a residence address for any other reason—e.g., a sex offender who lives in a house in a rural or tribal area that has no street address—the registry must include information that identifies where the individual has his or her home or habitually lives.

Temporary Lodging Information (§ 114(a)(7)): Sex offenders who reoffend may commit new offenses at locations away from the places in which they have a permanent or long-term presence. Indeed, to the extent that information about sex offenders' places of residence is available to the authorities, but information is lacking concerning their temporary lodging elsewhere, the relative attractiveness to sex offenders of molesting children or committing other sexual crimes while traveling or visiting away from home increases. Hence, to achieve the objectives of sex offender registration, it is valuable to have information about other places in which sex offenders are staying, even if only temporarily. The authority under SORNA § 114(a)(7) is accordingly exercised to provide that jurisdictions must require sex offenders to provide information about any place in which the sex offender is staying when away from his residence for seven or more days, including identifying the place and the period of time the sex offender is staying there. The benefits of having this information include facilitating the successful investigation of crimes committed by sex offenders while away from their normal places of residence, employment, or school attendance, and decreasing the attractiveness to sex offenders of committing crimes in such circumstances.

Travel and Immigration Documents (§ 114(a)(7)): The authority under SORNA § 114(a)(7) is exercised to provide that registrants must be required to produce or provide information about their passports, if they have passports, and that registrants who are aliens must be required to produce or provide information about documents establishing their immigration status. The registry must include digitized copies of these documents, document type and number information for such documents, or links to another database or databases that contain such information. Having this type of information in the registries serves various purposes, including helping to locate and apprehend registrants who may attempt to leave the United States after committing new sex offenses or registration violations; facilitating the tracking and identification of registrants who leave the United States but later reenter while still required to register (see SORNA § 128); and crosschecking the accuracy and completeness of other types of information that registrants are required to provide—e.g., if immigration documents show that an alien registrant is in the United States on a student visa but the registrant fails to provide information concerning the school attended as required by SORNA § 114(a)(5).

Employment Information (§ 114(a)(4), (a)(7)):

Employer Name and Address (§ 114(a)(4)): The registry must include ''[t]he name and address of any place where the sex offender is an employee or will be an employee.'' SORNA § 111(12) explains that ''employee'' includes ''an individual who is self-employed or works for any other entity, whether compensated or not.'' As the definitional provisions indicate, the information required under this heading is not limited to information relating to compensated work or a regular occupation, but includes as well name and address information for any place where the registrant works as a volunteer or otherwise works without remuneration. The statute refers to places in which the sex offender ''will be an employee'' so as to cover, for example, cases in which a sex offender is initially being registered prior to release from imprisonment and has secured employment that will commence upon his release, and other circumstances in which a sex offender reports an initiation or change of employment to a jurisdiction before the new employment commences. It does not mean that jurisdictions must include in their registries merely speculative information sex offenders have provided about places they may work in the future.

Other Employment Information (§ 114(a)(7)): A sex offender who is employed may not have a fixed place of employment—e.g., a long-haul trucker whose ''workplace'' is roads and highways throughout the country, a self-employed handyman who works out of his home and does repair or home-improvement work at other people's homes, or a person who frequents sites that contractors visit to obtain day labor and works for whatever contractor hires him on a given day. Knowing as far as possible where such a sex offender is in the course of employment serves the same public safety purposes as the corresponding information regarding a sex offender who is employed at a fixed location. The authority under section 114(a)(7) is accordingly exercised to require that information be obtained and included in the registry concerning the places where such a sex offender works with whatever definiteness is possible under the circumstances, such as information about normal travel routes or the general area(s) in which the sex offender works.

Professional Licenses (§ 114(a)(7)): The authority under section 114(a)(7) is exercised to require that information be obtained and included in the registry concerning all licensing of the registrant that authorizes the registrant to engage in an occupation or carry out a trade or business. Information of this type may be helpful in locating the registrant if he or she absconds, may provide a basis for notifying the responsible licensing authority if the registrant's conviction of a sex offense may affect his or her eligibility for the license, and may be useful in crosschecking the accuracy and completeness of other information the registrant is required to provide—e.g., if the registrant is licensed to engage in a certain occupation but does not provide name or place of employment information as required by section 114(a)(4) for such an occupation.

School Information (§ 114(a)(5)): The registry must include ''[t]he name and address of any place where the sex offender is a student or will be a student.'' Section 111(11) defines ''student'' to mean ''an individual who enrolls in or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institution of higher education.'' As the statutory definition indicates, the requirement extends to all types of educational institutions. Hence, this information must be provided for private schools as well as public schools, including both parochial and non-parochial private schools, and regardless of whether the educational institution is attended for purposes of secular, religious, or cultural studies. The registration information requirement of section 114(a)(5) refers to the names and addresses of educational institutions where a sex offender has or will have a physical presence as a student. It does not require information about a sex

offender's participating in courses only remotely through the mail or the Internet. (Internet identifiers and addresses used by a sex offender in such remote communications, however, must be included in the registration information as provided in the discussion of ''INTERNET IDENTIFIERS AND ADDRESSES'' earlier in this list.) As with residence and employment information, the statute refers to information about places the sex offender ''will be'' a student so as to cover, for example, circumstances in which a sex offender reports to a jurisdiction that he has enrolled in a school prior to his commencement of attendance at that school. It does not mean that jurisdictions must include in their registries merely speculative information sex offenders have provided about places they may attend school in the future.

Vehicle Information (§ 114(a)(6), (a)(7)): The registry must include ''[t]he license plate number and a description of any vehicle owned or operated by the sex offender.'' This includes, in addition to vehicles registered to the sex offender, any vehicle that the sex offender regularly drives, either for personal use or in the course of employment. A sex offender may not regularly use a particular vehicle or vehicles in the course of employment, but may have access to a large number of vehicles for employment purposes, such as using many vehicles from an employer's fleet in a delivery job. In a case of this type, jurisdictions are not required to obtain information concerning all such vehicles to satisfy SORNA's minimum informational requirements, but jurisdictions are free to require such information if they are so inclined. The authority under § 114(a)(7) is exercised to define and expand the required information concerning vehicles in two additional respects. First, the term ''vehicle'' should be understood to include watercraft and aircraft, in addition to land vehicles, so descriptive information must be required for all such vehicles owned or operated by the sex offender. The information must include the license plate number if it is a type of vehicle for which license plates are issued, or if it has no license plate but does have some other type of registration number or identifier, then information concerning such a registration number or identifier must be included. To the extent that any of the information described above may be beyond the scope of section 114(a)(6), the authority under section 114(a)(7) is exercised to provide that it must be obtained and included in the registry. Second, the sex offender must be required to provide and the registry must include information concerning the place or places where the registrant's vehicle or vehicles are habitually parked, docked, or otherwise kept. Having information of this type may help to prevent flight, facilitate investigation, or effect an apprehension if the registrant is implicated in the commission of new offenses or violates registration requirements.

Date of Birth (§ 114(a)(7)). The authority under § 114(a)(7) is exercised to require date of birth information for registrants, which must be included in the registry. Since date of birth is regularly utilized as part of an individual's basic identification information, having this information in the registry is of obvious value in helping to identify, track, and locate registrants. The information the jurisdiction requires registrants to provide under this heading must include any date that the registrant uses as his or her purported date of birth—not just his or her actual date of birth—since registrants may, for example, provide false date of birth information in seeking employment that would provide access to children.

Physical Description (§ 114(b)(1)): The registry must include ''[a] physical description of the sex offender.'' This must include a description of the general physical appearance or characteristics of the sex offender, and any identifying marks, such as scars or tattoos.

Text of Registration Offense (§ 114(b)(2)): The registry must include ''[t]he text of the provision of law defining a criminal offense for which the sex offender is registered.'' As with other information in the registries, this does not mean that the registry must be a paper records system that includes a hard copy of the statute defining the registration offense. Rather, the registry must be an electronic database, and the relevant statutory provision must be included as electronic text. Alternatively, this requirement can be satisfied by including in the central registry database a link or citation to the statute defining the registration offense if: (i) Doing so provides online access to the linked or cited provision, and (ii) the link or citation will continue to provide access to the offense as formulated at the time the registrant was convicted of it, even if the defining statute is subsequently amended.

Criminal History and Other Criminal Justice Information (§ 114(b)(3)): The registry must include ''[t]he criminal history of the sex offender, including the date of all arrests and convictions; the status of parole, probation, or supervised release; registration status [i.e., whether the sex offender is in violation of the registration requirement and unlocatable]; and the existence of any outstanding arrest warrants for the sex offender.'' This requirement can be satisfied by including the specified types of information in the central registry database, or by including in that database links or identifying numbers that provide access to these types of information in criminal justice databases that contain them.

Current Photograph (§ 114(b)(4)): The registry information must include ''[a] current photograph of the sex offender.'' As with other information in the registries, this does not mean that the registry must be a paper records system that includes physical photographs. Rather, the photographs of sex offenders must be included in digitized form in an electronic registry, so as to permit the electronic transmission of registration information that is necessary to implement other SORNA requirements. (For more about the taking of photographs and keeping them current, see the discussion of periodic in-person appearances in Part XI of these Guidelines.)

Fingerprints and Palm Prints (§ 114(b)(5)): The registry information must include ''[a] set of fingerprints and palm prints of the sex offender.'' As with other registration information, this should be understood to refer to digitized fingerprint and palm print information rather than physical fingerprint cards and palm prints. The requirement can be satisfied by including such digitized fingerprint and palm print information in the central registry database, or by providing links or identifying numbers in the central registry database that provide access to fingerprint and palm print information in other databases for each registered sex offender.

DNA (§ 114(b)(6)): The registry information must include ''[a] DNA sample of the sex offender.'' This means that a DNA sample must be taken, or must have been taken, from the sex offender, for purposes of analysis and entry of the resulting DNA profile into the Combined DNA Index System (CODIS). The requirement is satisfied by including information in the central registry database that confirms collection of such a sample from the sex offender for purposes of analysis and entry of the DNA profile into CODIS or inclusion of the sex offender's DNA profile in CODIS.

Driver's License or Identification Card (§ 114(b)(7)): The registry information

must include ''[a] photocopy of a valid driver's license or identification card issued to the sex offender by a jurisdiction.'' The requirement can be satisfied by including a digitized photocopy of the specified documents in the central registry database for each sex offender to whom such a document has been issued. Alternatively, it can be satisfied by including in the central registry database links or identifying numbers that provide access in other databases (such as a Department of Motor Vehicles database) to the information that would be shown by such a photocopy. As noted, this requirement pertains to sex offenders to whom drivers' licenses or identification cards have been issued. It does not mean that jurisdictions must issue drivers' licenses or identification cards to sex offenders to whom they would not otherwise issue such documents in order to create this type of information for inclusion in the registry.

VII. Disclosure and Sharing of Information

The SORNA requirements for disclosure and sharing of information about registrants appear primarily in section 118, which is concerned with sex offender Web sites, and section 121, which is concerned with community notification in a broader sense and with some more targeted types of disclosures. The two sections will be discussed separately.

A. Sex Offender Web Sites

Section 118(a) of SORNA states a general rule that jurisdictions are to ''make available on the Internet, in a manner that is readily accessible to all jurisdictions and to the public, all information about each sex offender in the registry.'' This general requirement is subject to certain mandatory and discretionary exemptions, appearing in subsections (b) and (c) of section 118, which are discussed below. As the later discussion explains, after the mandatory and discretionary exemptions are taken into account, the affirmative Web site posting requirements are limited to specified information concerning sex offenders' names, addresses or locations, vehicle descriptions and license plate numbers, physical descriptions, sex offenses for which convicted, and current photographs.

Currently, all 50 states, the District of Columbia, Puerto Rico, and Guam have sex offender Web sites that make information about registered sex offenders available to the public. The listed jurisdictions may need to modify their existing Web sites to varying degrees to implement the requirements of section 118.

Beyond stating a general rule of Web site posting for sex offender information (subject to exceptions and limitations as discussed below), subsection (a) of section 118 includes requirements about the field-search capabilities of the jurisdictions' Web sites. In part, it states that these field search capabilities must include searches by ''zip code or geographic radius set by the user.'' In other words, the Web sites must be so designed that members of the public who access a Web site are able to specify particular zip code areas, and are able to specify geographic radii—e.g., within one mile of a specified address—and thereby bring up on the Web site the information about all of the posted sex offenders in the specified zip code or geographic area.

Subsection (a) of section 118 further states that each Web site ''shall also include * * * all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Web site and shall participate in that Web site as provided by the Attorney General.'' The statutory basis for the referenced National Sex Offender Public Web site (NSOPW) appears in SORNA § 120. It is operated by the Department of Justice at the address *www.nsopr.gov.* All 50 states, the District of Columbia, Puerto Rico, and Guam currently participate in the NSOPW, which provides public access to the information in their respective sex offender Web sites through single-query searches on a national site. As noted, participation in the NSOPW is a required element of SORNA implementation. To satisfy the requirement under section 118(a) of having ''all field search capabilities needed for full participation in the [NSOPW],'' jurisdictions' sex offender Web sites must allow searches by name, county, and city/town, as well as having the zip code and geographic radius search capacities mentioned specifically in the statute.

Other SORNA requirements relating to sex offender Web sites are discussed in the remainder of this Subpart under the following headings: Mandatory exemptions, discretionary exemptions and required inclusions, remote communication addresses, and other provisions.

Mandatory Exemptions

Section 118(b)(1)–(3) identifies three types of information that are mandatorily exempt from disclosure, and section 118(b)(4) gives the Attorney General the authority to create additional mandatory exemptions. The limitations of subsection (b) only constrain jurisdictions in relation to the information made available on their publicly accessible sex offender Web sites. They do not limit the discretion of jurisdictions to disclose these types of information in other contexts. The types of information that are within the mandatory exemptions from public sex offender Web site disclosure are as follows:

Victim Identity: Section 118(b)(1) exempts ''the identity of any victim of a sex offense.'' The purpose of this exemption is to protect victim privacy. So long as the victim is not identified, this does not limit jurisdictions' discretion to include on the Web site information about the nature and circumstances of the offense, which may include information relating to the victim, such as the age and gender of the victim, and the conduct engaged in by the sex offender against the victim.

Social Security Number: Section 118(b)(2) exempts ''the Social Security number of the sex offender.''

Arrests Not Resulting in Conviction: Section 118(b)(3) exempts ''any reference to arrests of the sex offender that did not result in conviction.'' As noted, this mandatory exemption, like the others, only affects the information that may be posted on a jurisdiction's public sex offender Web site. It does not limit a jurisdiction's use or disclosure of arrest information in any other context, such as disclosure to law enforcement agencies for law enforcement purposes, or disclosure to the public (by means other than posting on the sex offender Web site) under ''open records'' laws.

Travel and Immigration Document Numbers: The authority under section 118(b)(4) is exercised to exempt the numbers assigned to registrants' passports and immigration documents. This exemption reflects concerns that public posting of such information could facilitate identity theft and could provide a source of passport and immigration document numbers to individuals seeking to enter, remain in, or travel from the United States using forged documents or false identities. Like the other mandatory exemptions, this exemption only affects the information that may be posted on a jurisdiction's public sex offender Web site. It does not limit a jurisdiction's use or disclosure of registrants' travel or immigration document information in any other context, such as disclosure to agencies with law enforcement, immigration, or national security functions.

Discretionary Exemptions and Required Inclusions

Section 118(c)(1)–(3) provides three optional exemptions, which describe information that jurisdictions may exempt from their Web sites in their discretion. The first of these is ''any information about a tier I sex offender convicted of an offense other than a specified offense against a minor.'' The meaning of ''tier I sex offender'' is explained in Part V of these Guidelines, and the meaning of ''specified offense against a minor'' is explained in Part IV.D of these Guidelines. The second and third optional exemptions are, respectively, ''the name of an employer of the sex offender'' and ''the name of an educational institution where the sex offender is a student.'' As noted, these exclusions are discretionary. Jurisdictions are free to include these types of information on their sex offender Web sites if they are so inclined.

Section 118(c)(4) provides a further optional exemption of ''any other information exempted from disclosure by the Attorney General.'' This authorization recognizes that there are some additional types of information that are required to be included in sex offender registries by section 114, but whose required disclosure through public sex offender Web sites may reasonably be regarded by particular jurisdictions as inappropriate or unnecessary. For example, public access to registrants' remote communication routing addresses (such as e-mail addresses) presents both risks and benefits. Minimizing the risks and maximizing the benefits depends on the appropriate design of the means and form of access. The recommended treatment of such information is discussed later in this Subpart. A number of other types of required registration information, such as fingerprints, palm prints, and DNA information, are primarily or exclusively of interest to law enforcement.

In positive terms, as set out in the list below, there are eight core types of information whose public disclosure through the sex offender Web sites has the greatest value in promoting public safety by enabling members of the public to identify sex offenders, to know where they are, and to know what crimes they have committed. The list below is an exhaustive list of the types of registration information that jurisdictions must include on their public sex offender Web sites to satisfy the requirements for SORNA implementation. All other types of registration information are excluded from required Web site posting, either on a mandatory basis under section 118(b), on a discretionary basis under section 118(c)(1)–(3), or on the basis of the Attorney General's authority to allow additional discretionary exemptions under section 118(c)(4). The list of informational items that jurisdictions must include on their public sex offender Web sites is as follows:

The name of the sex offender, including any aliases.

The address of each residence at which the sex offender resides or will reside and, if the sex offender does not have any (present or expected) residence address, other information about where the sex offender has his or her home or habitually lives. If current information of this type is not available because the sex offender is in violation of the requirement to register or unlocatable, the Web site must so note.

The address of any place where the sex offender is an employee or will be an employee and, if the sex offender is employed but does not have a definite employment address, other information about where the sex offender works.

The address of any place where the sex offender is a student or will be a student.

The license plate number and a description of any vehicle owned or operated by the sex offender.

A physical description of the sex offender.

The sex offense for which the sex offender is registered and any other sex offense for which the sex offender has been convicted.

A current photograph of the sex offender.

The foregoing list remains subject to the discretionary authority of jurisdictions under section 118(c)(1) to exempt information about a tier I sex offender convicted of an offense other than a specified offense against a minor.

Remote Communication Addresses

Public access to or disclosure of sex offenders' remote communication routing addresses and their equivalent—such as e-mail addresses and telephone numbers—is discussed separately because the issue presents both risks and benefits and merits careful handling by jurisdictions.

On the one hand, appropriately designed forms of access to such information may further the public safety objectives of sex offender registration and notification. For example, the operators of Internet social networking services that serve children may validly wish to check whether the e-mail addresses of individuals on their user lists are those of registered sex offenders, so that they can prevent sex offenders from using their services as avenues for Internet luring of children for purposes of sexual abuse. Likewise, a parent may legitimately wish to check whether the e-mail address of an unknown individual who is communicating with his or her child over the Internet is that of a registered sex offender, for the same protective purpose.

On the other hand, some forms of public disclosure of this type of information—such as including sex offenders' e-mail addresses as part of the information in their individual listings on the sex offender Web sites, which also include their names, locations, etc.—could raise serious concerns about unintended consequences and misuse. Posting of the information in this form could provide ready access by sex offenders to the e-mail addresses of other sex offenders, thereby facilitating networking among such offenders through the Internet for such purposes as: Exchanging information about or providing access to child victims for purposes of sexual abuse; recruiting confederates and accomplices for the purpose of committing child sexual abuse or exploitation offenses or other sexually violent crimes; trafficking in child pornography; and sharing ideas and information about how to commit sexual crimes, avoid detection and apprehension for committing such crimes, or evade registration requirements.

The public safety benefits of public access in this context may be realized, and the risks and concerns addressed, by not including remote communication routing addresses or information that would enable sex offenders to contact each other on the individual public Web site postings of registrants, but including on the Web sites a function by which members of the public may enter, e.g., an e-mail address or phone number and receive an answer whether the specified address or number has been registered as that of a sex offender. In the case of a concerned parent as described above, for example, this could enable the parent to ascertain that the e-mail address of an individual attempting to communicate through the Internet with his or her child is the address of a sex offender, but without providing sex offenders access to listings showing the e-mail addresses of other persons who may share their dispositions to commit sexual crimes.

Jurisdictions are accordingly permitted and encouraged to provide public access to remote communication

address information included in the sex offender registries, in the form described above, i.e., a function that allows checking whether specified addresses are included in the registries as the addresses of sex offenders. The registry management and Web site software that the Justice Department is developing pursuant to SORNA § 123 will include software for such a Web site function.

Other Provisions

The final three subsections in section 118 contain additional Web site specifications as follows:

Subsection (d) requires that sites ''include, to the extent practicable, links to sex offender safety and education resources.''

Subsection (e) requires that sites ''include instructions on how to seek correction of information that an individual contends is erroneous.'' A jurisdiction could comply with this requirement, for example, by including on its Web site information identifying the jurisdiction's agency responsible for correcting erroneous information, and advising persons that they can contact this agency if they believe that information on the site is erroneous.

Subsection (f) requires that sites include ''a warning that information on the site should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address,'' and further provides that the warning ''shall note that any such action could result in civil or criminal penalties.''

B. Community Notification and Targeted Disclosures

Section 121(b) of SORNA states that ''immediately after a sex offender registers or updates a registration * * * the information in the registry (other than information exempted from disclosure by the Attorney General) about that offender'' must be provided to various specified entities and individuals. The requirement that the information must be provided to the specified recipients ''immediately'' should be understood to mean that it must be provided within three business days. *Cf.* SORNA §§ 113(b)(2), 117(a) (equating within three business days and ''immediately'' in relation to initial registration). The requirement that the information be provided immediately is qualified by section 121(c), which provides that recipients described in section 121(b)(6)–(7)—i.e., volunteer organizations in which contact with minors or other vulnerable individuals might occur, and any organization, company, or individual who requests notification—''may opt to receive the notification * * * no less frequently than once every five business days.''

These requirements will be discussed in turn in relation to two groups of recipients—a group of four types of recipients that require special treatment, followed by suggestions for a uniform approach in relation to the remaining types of recipients. The four types that require special treatment are as follows:

National Databases: Section 121(b)(1) states that the information is to be provided to ''[t]he Attorney General, who shall include that information in the National Sex Offender Registry or other appropriate databases.'' The National Sex Offender Registry (NSOR) is a national database maintained by the Federal Bureau of Investigation (FBI), which compiles information from the registration jurisdictions' sex offender registries and makes it available to criminal justice agencies on a nationwide basis. The current statutory basis for NSOR appears in SORNA § 119(a). The statute refers to the Attorney General including the information submitted by jurisdictions in NSOR ''or other appropriate databases'' because some types of registry information described in SORNA § 114, such as criminal history information, may be maintained by the FBI in other databases rather than directly in the NSOR database. In addition, the United States Marshals Service, which is the lead federal agency in investigating registration violations by sex offenders and assisting jurisdictions in enforcing their registration requirements, may establish an additional national database or databases to help in detecting, investigating, and apprehending sex offenders who violate registration requirements. Jurisdictions accordingly can implement the requirement of section 121(b)(1) by submitting to the FBI within three business days the types of registry information that the FBI includes in NSOR or other national databases, and by submitting information within the same time frame to other federal agencies (such as the United States Marshals Service) in conformity with any requirements the Department of Justice or the Marshals Service may adopt for this purpose.

Law Enforcement and Supervision Agencies: Section 121(b)(2), in part, identifies as further required recipients ''[a]ppropriate law enforcement agencies (including probation agencies, if appropriate) * * * in each area in which the individual resides, is an employee or is a student.'' ''Law enforcement agencies'' should be understood to refer to agencies with criminal investigation or prosecution functions, such as police departments, sheriffs' offices, and district attorneys' offices. ''Probation agencies, if appropriate'' should be understood to refer to all offender supervision agencies that are responsible for a sex offender's supervision. Jurisdictions can implement the requirement of section 121(b)(2) by making registration information available to these agencies within three business days, by any effective means—permissible options include electronic transmission of registration information and provision of online access to registration information. Jurisdictions may define the relevant ''area[s]'' in which a registrant resides, is an employee, or is a student for purposes of section 121(b)(2) in accordance with their own policies, or may avoid the need to have to specify such areas by providing access to sex offender registry information to law enforcement and supervision agencies generally, since doing so makes the information available to recipients in all areas (however defined). The authority under the introductory language in section 121(b) to exempt information from disclosure is not exercised in relation to these recipients with respect to any of the information required to be included in registries under section 114 because law enforcement and supervision agencies need access to complete information about sex offenders to carry out their protective, investigative, prosecutorial, and supervisory functions.

Jurisdictions: Section 121(b)(3) identifies as required recipients ''[e]ach jurisdiction where the sex offender resides, is an employee, or is a student, and each jurisdiction from or to which a change of residence, employment, or student status occurs.'' This is part of a broader group of SORNA provisions concerning the exchange of registration information among jurisdictions and ensuring that all relevant jurisdictions have such information in an up-to-date form. The implementation of section 121(b)(3) and other provisions relating to these matters is discussed in Parts IX and X of these Guidelines.

National Child Protection Act Agencies: Section 121(b)(4) identifies as required recipients ''[a]ny agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a).'' The National Child Protection Act (NCPA) provides procedures under which qualified entities (e.g., prospective employers of child care providers) may request an authorized

state agency to conduct a criminal history background check to obtain information bearing on an individual's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities. The authorized agency makes a determination whether the individual who is the subject of the background check has been convicted of, or is under indictment for, a crime bearing on the individual's fitness for such responsibilities, and conveys that determination to the qualified entity. Considering the nature of the recipients under section 121(b)(4) and the functions for which they need information about sex offenders, jurisdictions can implement section 121(b)(4) by making available to such agencies (i.e., those authorized to conduct NCPA background checks) within three business days all criminal history information in the registry relevant to the conduct of such background checks.

Beyond the four categories specified above, section 121(b) requires that sex offender registration information be provided to several other types of recipients, as follows:

Each school and public housing agency in each area in which the sex offender resides, is an employee, or is a student (section 121(b)(2)).

Social service entities responsible for protecting minors in the child welfare system (section 121(b)(5)).

Volunteer organizations in which contact with minors or other vulnerable individuals might occur (section 121(b)(6)).

Any organization, company, or individual who requests such notification pursuant to procedures established by the jurisdiction (section 121(b)(7)).

Implementing the required provision of information about registrants to these entities potentially presents a number of difficulties for jurisdictions, such as problems in identifying and maintaining comprehensive lists of recipients in these categories, keeping those lists up to date, subdividing recipients by ''area'' with respect to the notification under section 121(b)(2), and developing means of transmitting or providing access to the information for the various types of recipients. The objectives of these provisions, however, can be achieved by augmenting public sex offender Web sites to include appropriate notification functions. Specifically, a jurisdiction will be deemed to have satisfied the requirements of these provisions of section 121(b) if it adopts an automated notification system that incorporates substantially the following features:

The information required to be included on sex offender Web sites, as described in Part VII.A of these Guidelines, is posted on the jurisdiction's sex offender Web site within three business days.

The jurisdiction's sex offender Web site includes a function under which members of the public and organizations can request notification when sex offenders commence residence, employment, or school attendance within zip code or geographic radius areas specified by the requester, where the requester provides an e-mail address to which the notice is to be sent.

Upon posting on the jurisdiction's sex offender Web site of new residence, employment, or school attendance information for a sex offender within an area specified by the requester, the system automatically sends an e-mail notice to the requester that identifies the sex offender, thus enabling the requester to access the jurisdiction's Web site and view the new information about the sex offender.

VIII. Where Registration Is Required

Section 113(a) of SORNA provides that a sex offender shall register and keep the registration current in each jurisdiction in which the sex offender resides, is an employee, or is a student. Section 113(a) of SORNA further provides that, for initial registration purposes only, a sex offender must also register in the jurisdiction in which convicted if it is different from the jurisdiction of residence.

Starting with the last—mentioned requirement—registration in jurisdiction of conviction if different from jurisdiction of residence—in some cases the jurisdiction in which a sex offender is convicted is not the same as the jurisdiction to which the sex offender goes to live immediately following release. For example, a resident of jurisdiction A is convicted for a sex offense in jurisdiction B. After being released following imprisonment or sentenced to probation in jurisdiction B, the sex offender returns immediately to jurisdiction A. Although jurisdiction B is not the sex offender's jurisdiction of residence following his release or sentencing, jurisdiction B as the convicting jurisdiction is in the best position initially to take registration information from the sex offender and to inform him of his registration obligations, as required by SORNA § 117(a), and is likely to be the only jurisdiction in a position to do so within the time frames specified in SORNA §§ 113(b) and 117(a)—i.e., before release from imprisonment, or within 3 business days of sentencing for a sex offender with a non-incarcerative sentence. Hence, SORNA § 113(a) provides for initial registration in the jurisdiction of conviction in such cases. SORNA, however, never requires continued registration in the jurisdiction of conviction if the sex offender does not reside, work, or attend school in that jurisdiction.

Beyond the special case of initial registration in the conviction jurisdiction where it differs from the residence jurisdiction, section 113(a) requires both registration and keeping the registration current in each jurisdiction where a sex offender resides, is an employee, or is a student. Starting with jurisdictions of residence, this means that a sex offender must initially register in the jurisdiction of residence if it is the jurisdiction of conviction, and must thereafter register in any other jurisdiction in which the sex offender subsequently resides.

The notion of ''residence'' requires definition for this purpose. Requiring registration only where a sex offender has a residence or home in the sense of a fixed abode would be too narrow to achieve SORNA's objective of ''comprehensive'' registration of sex offenders (see § 102), because some sex offenders have no fixed abodes. For example, a sex offender may be homeless, living on the street or moving from shelter to shelter, or a sex offender may live in something that itself moves from place to place, such as a mobile home, trailer, or houseboat. SORNA § 111(13) accordingly defines ''resides'' to mean ''the location of the individual's home or other place where the individual habitually lives.'' This entails that a sex offender must register:

In any jurisdiction in which he has his home; and

In any jurisdiction in which he habitually lives (even if he has no home or fixed address in the jurisdiction, or no home anywhere).

The scope of ''habitually lives'' in this context is not self-explanatory and requires further definition. An overly narrow definition would undermine the objectives of sex offender registration and notification under SORNA. For example, consider the case of a sex offender who nominally has his home in one jurisdiction—e.g., he maintains a mail drop there, or identifies his place of residence for legal purposes as his parents' home, where he visits occasionally—but he lives most of the time with his girlfriend in an adjacent jurisdiction. Registration in the nominal home jurisdiction alone in such a case would mean that the registration information is not informative as to

where the sex offender is actually residing, and hence would not fulfill the public safety objectives of tracking sex offenders' whereabouts following their release into the community.

''Habitually lives'' accordingly should be understood to include places in which the sex offender lives with some regularity, and with reference to where the sex offender actually lives, not just in terms of what he would choose to characterize as his home address or place of residence for self-interested reasons. The specific interpretation of this element of ''residence'' these Guidelines adopt is that a sex offender habitually lives in the relevant sense in any place in which the sex offender lives for at least 30 days. Hence, a sex offender resides in a jurisdiction for purposes of SORNA if the sex offender has a home in the jurisdiction, or if the sex offender lives in the jurisdiction for at least 30 days. Jurisdictions may specify in the manner of their choosing the application of the 30-day standard to sex offenders whose presence in the jurisdiction is intermittent but who live in the jurisdiction for 30 days in the aggregate over some longer period of time. Like other aspects of SORNA, the requirement to register sex offenders who ''reside'' in the jurisdiction as defined in section 111(13) is a minimum requirement, and jurisdictions in their discretion may require registration more broadly (for example, based on presence in the jurisdiction for a period shorter than 30 days).

As to the timing of registration based on changes of residence, the understanding of ''habitually lives'' to mean living in a place for at least 30 days does not mean that the registration of a sex offender who enters a jurisdiction to reside may be delayed until after he has lived in the jurisdiction for 30 days. Rather, a sex offender who enters a jurisdiction in order to make his home or habitually live in the jurisdiction must be required to register within three business days, as discussed in Part X.A of these Guidelines. Likewise, a sex offender who changes his place of residence within a jurisdiction must be required to report the change within three business days, as discussed in Part X.A.

SORNA also requires sex offenders to register and keep the registration current in any jurisdiction in which the sex offender is an employee. Hence, a sex offender who resides in jurisdiction A and commutes to work in an adjacent jurisdiction B must register and keep the registration current in both jurisdictions—in jurisdiction A as a resident, and in jurisdiction B as an employee. SORNA § 111(12) defines ''employee'' for this purpose to include ''an individual who is self-employed or works for any other entity, whether compensated or not.'' As with residence, the SORNA requirement to register in jurisdictions of employment is not limited to sex offenders who have fixed places of employment or definite employment addresses. For example, consider a person residing in jurisdiction A who works out of his home as a handyman, regularly doing repair or home-improvement work at other people's houses both in jurisdiction A and in an adjacent jurisdiction B. Since the sex offender works in both jurisdictions, he must register in jurisdiction B as well as jurisdiction A.

The implementation measure for these SORNA requirements is for jurisdictions to require sex offenders who are employed in the jurisdiction, as described above, to register in the jurisdiction. If a sex offender has some employment-related presence in a jurisdiction, but does not have a fixed place of employment or regularly work within the jurisdiction, line drawing questions may arise, and jurisdictions may resolve these questions based on their own judgments. For example, if a sex offender who is a long haul trucker regularly drives through dozens of jurisdictions in the course of his employment, it is not required that all such jurisdictions must make the sex offender register based on his transient employment-related presence, but rather they may treat such cases in accordance with their own policies. (For more about required employment information, see the discussion in Part VI of these Guidelines.)

The final SORNA basis of registration is being a student, which SORNA § 111(11) defines to mean ''an individual who enrolls in or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institution of higher education.'' Hence, for example, a sex offender who resides in jurisdiction A, and is enrolled in a college in an adjacent jurisdiction B to which he commutes for classes, must be required to register in jurisdiction B as well as jurisdiction A. School enrollment or attendance in this context should be understood as referring to attendance at a school in a physical sense. It does not mean that a jurisdiction has to require a sex offender in some distant jurisdiction to register in the jurisdiction based on his taking a correspondence course through the mail with a school in the jurisdiction, or based on his taking courses at the school remotely through the Internet, unless the participation in the educational program also involves some physical attendance at the school in the jurisdiction.

In the context of SORNA's requirements concerning the jurisdictions in which sex offenders must register, as in all other contexts under SORNA and these Guidelines, ''jurisdiction'' has the meaning given in SORNA § 111(10)—i.e., it refers to the 50 States, the District of Columbia, the five principal territories, and Indian tribes so qualifying under section 127. Hence, for example, if a sex offender resides in one county in a state but works in a different county in the same state, the state may wish to require the sex offender to appear for registration purposes before the responsible officials in both counties. But this is not a matter that SORNA addresses. Rather, the relevant ''jurisdiction'' for SORNA purposes in such a case is simply the state, and finer questions about particular locations, political subdivisions, or areas within the state in which a sex offender will be required to register are matters of state discretion under SORNA.

IX. Initial Registration

Under sections 113(b) and 117(a) of SORNA, jurisdictions must normally require that sex offenders be initially registered before release from imprisonment for the registration offense or, in case of a non-imprisonment sentence, within three business days of sentencing for the registration offense. Upon entry of the registration information into the registry, the initial registration jurisdiction must immediately forward the registration information to all other jurisdictions in which the sex offender is required to register. This is required by SORNA § 121(b)(3) (registration information is to be provided immediately to ''[e]ach jurisdiction where the sex offender resides, is an employee, or is a student.''). Hence, for example, if an imprisoned sex offender advises the conviction jurisdiction on initial registration that he will be residing in another jurisdiction following release, or that he will stay in the conviction jurisdiction but will be commuting to work in another jurisdiction, the conviction jurisdiction must notify the expected residence or employment jurisdiction by forwarding to that jurisdiction the sex offender's registration information (including the information about the expected residence or employment in that jurisdiction). The sex offender will then be required to make an in-person registration appearance within three

business days of commencing residence or employment in that jurisdiction, as discussed in Part X of these Guidelines.

With respect to sex offenders released from imprisonment, section 117(a) states that the initial registration procedures are to be carried out ''shortly before release of the sex offender from custody.'' ''Shortly'' does not prescribe a specific time frame, but jurisdictions should implement this requirement in light of the underlying objectives of ensuring that sex offenders have their registration obligations in mind when they are released, and avoiding situations in which registration information changes significantly between the time the initial registration procedures are carried out and the time the offender is released. However, jurisdictions are also encouraged, as a matter of sound policy, to effect initial registration with sufficient time in advance whenever possible so that the following can be done before the sex offender is released into the community: (i) Subjecting the registration information provided by the sex offender to any verification the jurisdiction carries out to ensure accuracy (e.g., cross checking with other records), (ii) obtaining any information needed for the registry that must be secured from sources other than the sex offender, (iii) posting of the sex offender's information on the jurisdiction's sex offender website, and (iv) effecting other required notifications and disclosures of information relating to the sex offender.

The specific initial registration procedures required by section 117(a) are as follows: Informing the sex offender of his or her duties under SORNA and explaining those duties. (Of course if the jurisdiction adopts registration requirements that encompass but go beyond the SORNA minimum, the sex offender should be informed of the full range of duties, not only those required by SORNA.)

Requiring the sex offender to read and sign a form stating that the duty to register has been explained and that the sex offender understands the registration requirement. Ensuring that the sex offender is registered—i.e., obtaining the required registration information for the sex offender and submitting that information for inclusion in the registry.

SORNA §§ 113(d) and 117(b) recognize that the normal initial registration procedure described above will not be feasible in relation to certain special classes of sex offenders, and provides that the Attorney General may prescribe alternative rules for the registration of such sex offenders. The specific problem is one of timing; it is not always possible to carry out the initial registration procedures for sex offenders who are required to register under SORNA prior to release from imprisonment (or within three days of sentencing) for the registration offense. The situations in which there may be problems of this type, and the rules adopted for those situations, are as follows:

Retroactive Classes

As discussed in Part II.C of these Guidelines, SORNA applies to all sex offenders, including those convicted of their registration offenses prior to the enactment of SORNA or prior to particular jurisdictions' incorporation of the SORNA requirements into their programs. Jurisdictions are specifically required to register such sex offenders if they remain in the system as prisoners, supervisees, or registrants, or if they later reenter the system because of conviction for some other crime (whether or not the new crime is a sex offense).

In some cases this will create no difficulty for registering these sex offenders in conformity with the normal SORNA registration procedures. For example, suppose that a sex offender is convicted of an offense in the SORNA registration categories in 2005, that the jurisdiction implements SORNA in its registration program in 2008, and that the sex offender is released on completion of imprisonment in 2010. Such a sex offender can be registered prior to release from imprisonment in the same manner as sex offenders convicted following the enactment of SORNA and its implementation by the jurisdiction.

But in other cases this will not be possible, as illustrated by the following examples:

Example 1: A sex offender convicted by a state for an offense in the SORNA registration categories is sentenced to probation, or released on post-imprisonment supervision, in 2005. The sex offender is not registered near the time of sentencing or before release from imprisonment, because the state did not require registration for the offense in question at that time. The state subsequently implements SORNA in 2008, which will include registering such a sex offender. But it is impossible to do so near the time of his sentencing or before his release from imprisonment, because that time is past. Likewise, a person convicted of a sex offense by an Indian tribal court in, e.g., 2005 may have not been registered near the time of sentencing or release because the tribe had not yet established any sex offender registration program at the time. If the person remains under supervision when the tribe implements SORNA, registration will be required by the SORNA standards, but the normal time frame for initial registration under SORNA will have passed some years ago, so registration within that time frame is impossible.

Example 2: A sex offender is required to register for life by a jurisdiction based on a rape conviction in 1995 for which he was released from imprisonment in 2005. The sex offender was initially registered prior to his release from imprisonment on the basis of the jurisdiction's existing law, but the information concerning registration duties he was given at the time of release did not include telling him that he would have to appear periodically in person to verify and update the registration information (as required by SORNA § 116), because the jurisdiction did not have such a requirement at the time. So the sex offender will have to be required to appear periodically for verification and will have to be given new instructions about that as part of the jurisdiction's implementation of SORNA.

Example 3: A sex offender convicted in 1980 for an offense subject to lifetime registration under SORNA is released from imprisonment in 1990 but is not required to register at the time because the jurisdiction had not yet established a sex offender registration program. In 2010, following the jurisdiction's implementation of SORNA, the sex offender reenters the system because of conviction for a robbery. The jurisdiction will need to require the sex offender to register based on his 1980 conviction for a sex offense when he is released from imprisonment for the robbery offense. But it is not possible to carry out the initial registration procedure for the sex offender prior to his release from imprisonment for the registration offense-*i.e.*, the sex offense for which he was convicted in 1980-because that time is past.

With respect to sex offenders with pre-SORNA or pre-SORNA-implementation convictions who remain in the prisoner, supervision, or registered sex offender populations at the time of implementation—illustrated by the examples in the first and second bullets above—jurisdictions should endeavor to register them in conformity with SORNA as quickly as possible, including fully instructing them about the SORNA requirements, obtaining signed acknowledgments of such instructions, and obtaining and entering into the registry all information about them required under SORNA. But this may entail newly registering or re-registering a large number of sex offenders in the existing sex offender population, and it may not be feasible for a jurisdiction to do so immediately. Jurisdictions are accordingly authorized to phase in SORNA registration for such sex offenders in conformity with the appearance schedule of SORNA § 116. In other words, sex offenders in these existing sex offender populations who cannot be registered within the normal SORNA time frame (i.e., before release from imprisonment or within three

business days of sentencing for the registration offense) must be registered by the jurisdiction when it implements the SORNA requirements in its system within a year for sex offenders who satisfy the tier I criteria, within six months for sex offenders who satisfy the tier II criteria, and within three months for sex offenders who satisfy the tier III criteria. If a jurisdiction believes that it is not feasible for the jurisdiction to fully register the existing sex offender population in conformity with SORNA within these time frames, the jurisdiction should inform the SMART Office of the difficulty, and the SMART Office will consider whether an extension of time for implementation of SORNA under section 124(b) is warranted on that basis.

In cases in which a sex offender reenters the system based on conviction of some other offense—illustrated by the third example above—and is sentenced or released from imprisonment following the jurisdiction's implementation of SORNA, the normal SORNA initial registration procedures and timing requirements will apply, but with the new offense substituting for the predicate registration offense as the basis for the time frame. In other words, such a sex offender must be initially registered in the manner specified in SORNA § 117(a) prior to release from imprisonment for the new offense that brought him back into the system, or within three business days of sentencing for the new offense in case of a non-incarcerative sentence.

It may not always be possible to obtain information about earlier convictions of sex offenders in the classes described above, particularly when they occurred many years or decades ago, and available criminal history information may be uninformative as to factors such as victim age that can affect the nature and extent of registration requirements under SORNA. Jurisdictions may rely on the methods and standards they normally use in searching criminal records and on the information appearing in the records so obtained in carrying out the requirements described above to register sex offenders with pre-SORNA (or pre-SORNA-implementation) sex offense convictions.

Federal and Military Sex Offenders

There is no separate federal registration program for sex offenders required to register under SORNA who are released from federal or military custody. Rather, such sex offenders are integrated into the sex offender registration programs of the states and other (non-federal) jurisdictions following their release. Provisions of federal law, appearing in 18 U.S.C. 4042(c) and section 115(a)(8)(C) of Public Law 105–119, require federal and military correctional and supervision personnel to notify the receiving jurisdiction's authorities concerning the release to their areas of such sex offenders so that this integration can be effected. Moreover, these sex offenders are required to comply with the SORNA registration requirements in the jurisdictions in which they reside, are employed, or attend school as mandatory conditions of their federal supervision, as provided in 18 U.S.C. 3563(a)(8), 3583(d), 4209(a), and may be prosecuted under 18 U.S.C. 2250 if they fail to do so.

For example, consider a person convicted of aggravated sexual abuse under 18 U.S.C. 2241, who is released following his completion of the prison term for this offense. As provided in 18 U.S.C. 4042(c), the Federal Bureau of Prisons is required to inform the sex offender prior to his release that he must register as required by SORNA, and it notifies law enforcement and registration authorities in the jurisdiction in which the sex offender will reside following release. Situations of this type are in principle the same as those in which a sex offender enters a jurisdiction to reside following conviction in another (non-federal) jurisdiction—see Part X of these Guidelines for discussion—except that the federal authorities will not have registered the sex offender in the same manner that a non-federal jurisdiction would. The jurisdiction to which such a sex offender goes to reside following release from federal custody (or after sentencing for a federal offense, in case of a non-incarcerative sentence) accordingly must require the sex offender to appear in person to register within three business days, and must carry out the procedure described in SORNA § 117(a) when the sex offender appears for that purpose. The jurisdiction must also immediately forward the registration information for the sex offender to any other jurisdiction in which the sex offender is required to register under SORNA (e.g., on the basis of employment), as required by SORNA § 121(b)(3). If federal authorities notify the jurisdiction concerning the release of a sex offender to the jurisdiction, but the sex offender fails to appear and register as required, the jurisdiction must proceed as discussed in Part XIII of these Guidelines for cases involving possible violations of registration requirements.

Sex Offenders Incarcerated in Non-Conviction Jurisdictions

A sex offender sentenced to imprisonment may serve his or her prison term in a facility outside of the convicting jurisdiction. For example, an Indian tribe may not have its own correctional facility and may accordingly lease bed space from a county jail. Or a state may lease prison space in a facility in an adjacent state, so that some of its offenders serve their prison terms in the other state's facilities. In such a case, the jurisdiction incarcerating the sex offender may be neither the jurisdiction of conviction nor the jurisdiction of expected residence following release. But it is likely to be in the best position to initially take the required registration information from the sex offender and to instruct the sex offender concerning registration obligations, while the jurisdiction that convicted the sex offender may be in no position to do so prior to the sex offender's release, because the facility in which the sex offender is incarcerated is in another jurisdiction.

In such cases, the jurisdiction incarcerating the sex offender must carry out the initial registration procedure described in SORNA § 117(a) prior to releasing the sex offender and must immediately forward the registration information for the sex offender to any other jurisdiction in which the sex offender is required to register under SORNA (e.g., on the basis of expected residence), as required by SORNA § 121(b)(3).

Registrants Based on Foreign Convictions

Persons with foreign sex offense convictions are often required to register under SORNA, as discussed in Part IV.B of these Guidelines. Section 128 of SORNA directs the Attorney General, in consultation with the Secretary of State and the Secretary of Homeland Security, to establish a system for informing the relevant jurisdictions about persons entering the United States who are required to register under SORNA. Persons with foreign sex offense convictions provide an additional class who cannot be initially registered within the normal SORNA time frame. Since they are convicted and imprisoned in a foreign country, no domestic jurisdiction would normally be in a position to register them prior to their release from imprisonment (or near the time of sentencing in case of a non-incarcerative sentence).

The procedure for initial registration of such persons is logically the same as

that for other analogous classes discussed above: A jurisdiction must require a person with a foreign conviction for which registration is required under SORNA to appear in person to register within three business days of entering the jurisdiction to reside or commencing employment or school attendance in the jurisdiction. If the sex offender has not previously been registered by another jurisdiction, the jurisdiction must carry out the initial registration procedure as provided in SORNA § 117(a) when the sex offender appears. The jurisdiction must immediately forward the registration information to any other jurisdiction in which the sex offender is required to register under SORNA. If a jurisdiction is notified, by federal authorities pursuant to SORNA § 128 or otherwise, that a sex offender is entering the United States and is expected to be locating in the jurisdiction, but the sex offender fails to appear and register as required, the jurisdiction must follow the procedures discussed in Part XIII of these Guidelines for cases involving possible violations of registration requirements.

X. Keeping the Registration Current

There are a number of provisions in SORNA that are designed to ensure that changes in registration information are promptly reported, and that the registration information is kept fully up to date in all jurisdictions in which the sex offender is required to register:

Section 113(a) provides that a sex offender must keep the registration current in each jurisdiction in which the sex offender resides, is an employee, or is a student.

Section 113(c) provides that a sex offender must, not later than three business days after each change of name, residence, employment, or student status, appear in person in at least one jurisdiction in which the sex offender is required to register and inform that jurisdiction of all changes in the information required for that sex offender in the sex offender registry. It further provides that that information must immediately be provided to all other jurisdictions in which the sex offender is required to register.

Section 119(b) provides that updated information about a sex offender must be immediately transmitted by electronic forwarding to all relevant jurisdictions.

Section 121(b)(3) provides that immediately after a sex offender registers or updates a registration, the information in the registry (other than any exempted from disclosure by the Attorney General) must be provided to each jurisdiction where the sex offender resides, is an employee, or is a student, and each jurisdiction from or to which a change of residence, employment, or student status occurs.

Section 128 directs the Attorney General, in consultation with the Secretary of State and the Secretary of Homeland Security, to establish a system for informing relevant jurisdictions about persons entering the United States who are required to register under SORNA.

Implementation of these provisions requires the definition of implementation measures that can be carried out by the individual jurisdictions, whose collective effect will be to realize these provisions' objectives. The remainder of this Part of these Guidelines details the required implementation measures.

A. Changes of Name, Residence, Employment, or School Attendance

The in-person appearance requirements of section 113(c) described above serve to ensure—in connection with the most substantial types of changes bearing on the identification or location of sex offenders (name, residence, employment, school attendance)—that there will be an opportunity to obtain all required registration information from sex offenders in an up to date form, including direct meetings for this purpose between the sex offenders and the personnel or agencies who will be responsible for their registration. The purposes served by in-person appearances under the SORNA standards are further explained in Part XI of these Guidelines, in relation to the periodic in-person appearance requirements of section 116.

The required implementation measures for the appearances required by section 113(c)—and other information updating/sharing and enforcement provisions under SORNA as they bear on such appearances—are as follows:

Residence Jurisdictions: Each jurisdiction must require a sex offender who enters the jurisdiction to reside, or who is registered in the jurisdiction as a resident and changes his or her name or place of residence within the jurisdiction, to appear in person to register or update the registration within three business days. Also, each jurisdiction in which a sex offender is registered as a resident must:

Require the sex offender to inform the jurisdiction if the sex offender intends to commence residence, employment, or school attendance in another jurisdiction; and

If so informed by the sex offender, notify that other jurisdiction by transmitting the sex offender's registration information (including the information concerning the sex offender's expected residence, employment, or school attendance in that jurisdiction) immediately by electronic forwarding to that jurisdiction.

Employment Jurisdictions: Each jurisdiction must require a sex offender who commences employment in the jurisdiction, or changes employer or place of employment in the jurisdiction, to appear in person to register or update the registration within three business days.

School Jurisdictions: Each jurisdiction must require a sex offender who commences school attendance in the jurisdiction, or changes the school attended or place of school attendance in the jurisdiction, to appear in person to register or update the registration within three business days.

Information Sharing: In all cases in which a sex offender makes an in-person appearance in a jurisdiction and registers or updates a registration as described above, the jurisdiction must immediately transmit by electronic forwarding the registration information for the sex offender (including any updated information concerning name, residence, employment, or school attendance provided in the appearance) to all other jurisdictions in which:

The sex offender is or will be required to register as a resident, employee, or student; or

The sex offender was required to register as a resident, employee, or student until the time of a change of residence, employment, or student status reported in the appearance, even if the sex offender may no longer be required to register in that jurisdiction in light of the change of residence, employment, or student status.

Failure to Appear: If a jurisdiction is notified that a sex offender is expected to commence residence, employment, or school attendance in the jurisdiction, but the sex offender fails to appear for registration as required, the jurisdiction must inform the jurisdiction that provided the notification that the sex offender failed to appear, and must follow the procedures for cases involving possible violations of registration requirements, as discussed in Part XIII of these Guidelines.

Defining changes in such matters as residence and employment may present special difficulties in relation to sex offenders who lack fixed residence or employment. For example, a homeless sex offender may sleep on a different

park bench each night. Or the employer of a sex offender who does day labor, working for whatever contractor hires him on a given day, may change on a daily basis. In such cases, a jurisdiction is not required to treat all such changes as changes in residence or employment status that bring into play the requirement to conduct an in-person appearance within three business days for purposes of reporting the change. Rather, as discussed in Part VI of these Guidelines, the information in the registry describing the places of residence or employment for sex offenders who lack fixed residence or employment may be in more general terms, and jurisdictions may limit their reporting requirements to changes that would entail some modification of the registry information relating to these matters.

In one respect, the foregoing procedures for updating registration information through in-person appearances do not fully ensure that registrations will be kept current with respect to residence, employment, and school attendance information, because they relate to situations in which future information about these matters is available. But that is not always the case. For example, a transient sex offender may be leaving the jurisdiction in which he is registered as a resident, but may be unable to say where he will be living thereafter. Or a sex offender registered as an employee or student in a jurisdiction may quit his job or leave school, but may have no prospect for subsequent employment or education at the time. If such changes were not reported, the affected jurisdictions' registries would not be kept current, but rather would contain outdated information showing sex offenders to be residing, employed, or attending school in places where they no longer are. Accordingly, a jurisdiction in which a sex offender is registered as a resident, employee, or student must also require the sex offender to inform the jurisdiction if the sex offender is terminating residence, employment, or school attendance in the jurisdiction, even if there is no ascertainable or expected future place of residence, employment, or school attendance for the sex offender.

B. Changes in Other Registration Information

By incorporating the foregoing procedures into their registration programs, jurisdictions can implement the SORNA requirements for keeping the registration current in relation to name, residence, employment, and school attendance information. The registration information that sex offenders are required to provide under SORNA § 114, however, as discussed in Part VI of these Guidelines, includes as well information about vehicles owned or operated by sex offenders, temporary lodging information—i.e., information about any place in which a sex offender is staying when away from his residence for seven or more days—and information about designations that sex offenders use for self-identification or routing purposes in Internet communications or postings or telephonic communications. If changes occur in these types of information, the changes may eventually be reported as part of the periodic verification appearances required by section 116 of SORNA, as discussed in Part XI of these Guidelines. But the registration information may become in some respects seriously out of date if the verification appearances are relied on exclusively for this purpose.

For example, if a sex offender is on a yearly appearance schedule, the sex offender's motor vehicle information may be a year out of date by the time the sex offender reports at the next appearance that he has acquired a new vehicle. Temporary lodging at places away from a sex offender's residence might not be reported until long after the time when the sex offender was at the temporary location. Likewise, given the ease with which Internet addresses and identifiers and telephone numbers are added, dropped, or changed, the value of requiring information about them from registrants could be seriously undermined if they were only required to report changes periodically in the context of general verification meetings.

Hence, an additional implementation measure is necessary to keep registrations current with respect to these informational items:

Each jurisdiction in which a sex offender is registered as a resident must require the sex offender to report immediately changes in vehicle information, temporary lodging information, and changes in designations used for self-identification or routing in Internet communications or postings or telephonic communications, and must immediately transmit such changes in the registration information by electronic forwarding to all other jurisdictions in which the sex offender is required to register.

In addition, with respect to temporary lodging information, the residence jurisdiction must immediately transmit the information by electronic forwarding to the jurisdiction in which the temporary lodging by the sex offender takes place (if different from the residence jurisdiction), even if that is not a jurisdiction in which the sex offender is required to register.

C. International Travel

A sex offender who moves to a foreign country may pass beyond the reach of U.S. jurisdictions and hence may not be subject to any enforceable registration requirement under U.S. law unless and until he or she returns to the United States. But effective tracking of such sex offenders remains a matter of concern to the United States and its domestic jurisdictions, and some measures relating to them are necessary for implementation of SORNA.

Relevant provisions include SORNA § 128, which directs the Attorney General to establish a system for informing domestic jurisdictions about persons entering the United States who are required to register under SORNA, and 18 U.S.C. 2250(a)(2)(B), which makes it a federal crime for a sex offender to travel in foreign commerce and knowingly fail to register or update a registration as required by SORNA. To carry out its responsibilities under these provisions, the Department of Justice needs to know if sex offenders registered in U.S. jurisdictions are leaving the country, since such offenders will be required to resume registration if they later return to the United States to live, work, or attend school while still within their registration periods. Also, both for sex offenders who are convicted in the United States and then go abroad, and for sex offenders who are initially convicted in other countries, identifying such sex offenders when they enter or reenter the United States will require cooperative efforts between the Department of Justice (including the United States Marshals Service) and agencies of foreign countries. As a necessary part of such cooperative activities, foreign authorities may expect U.S. authorities to inform them about sex offenders coming to their jurisdictions from the United States, in return for their advising the United States about sex offenders coming to the United States from their jurisdictions. For this reason as well, federal authorities in the United States will need information about sex offenders leaving domestic jurisdictions to go abroad in order to effectively carry out the requirements of SORNA § 128 and enforce 18 U.S.C. 2250(a)(2)(B).

International travel also implicates the requirement of SORNA § 113(a) that sex offenders keep the registration current in all jurisdictions in which they reside, work, or attend school. If a sex offender simply leaves the country

and does not inform the jurisdiction or jurisdictions in which he has been registered, then the requirement to keep the registration current will not have been fulfilled. Rather, the registry information in the domestic jurisdictions will show that the sex offender is residing in the jurisdiction (or present as an employee or student) when that is no longer the case.

In addition, a sex offender who goes abroad may remain subject in some respects to U.S. jurisdiction. For example, a sex offender may be leaving to live on an overseas U.S. military base, as a service member, dependent, or employee, or to work as or for a U.S. military contractor in another country. In such cases, notification about the individual's status as a sex offender and intended activities abroad is of interest to federal authorities, because the presence of sex offenders implicates the same public safety concerns in relation to communities abroad for which the United States has responsibility (such as U.S. military base communities in foreign countries) as it does in relation to communities within the United States.

The following requirements accordingly apply in relation to sex offenders who leave the United States:

Each jurisdiction in which a sex offender is registered as a resident must require the sex offender to inform the jurisdiction if the sex offender intends to commence residence, employment, or school attendance outside of the United States.

If so informed by the sex offender, the jurisdiction must: (i) Notify all other jurisdictions in which the sex offender is required to register through immediate electronic forwarding of the sex offender's registration information (including the information concerning the sex offender's expected residence, employment, or school attendance outside of the United States), and (ii) notify the United States Marshals Service and update the sex offender's registration information in the national databases pursuant to the procedures under SORNA § 121(b)(1).

SORNA does not require that all notifications to jurisdictions by sex offenders concerning changes in their registration information be made through in-person appearances. Rather, the in-person appearance requirement of SORNA § 113(c) relates to changes in name, and to changes in residence, employment, or school attendance between jurisdictions or within jurisdictions, which jurisdictions must require sex offenders to report through in-person appearances under the circumstances expressly identified in Subpart A of this Part. The means by which sex offenders are required to report other changes in registration information discussed in this Part are matters that jurisdictions may determine in their discretion.

XI. Verification/Appearance Requirements

Section 116 of SORNA states that ''[a] sex offender shall appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which that offender is required to be registered not less frequently than'': (i) Each year for a tier I sex offender, (ii) every six months for a tier II sex offender, and (iii) every three months for a tier III sex offender. Jurisdictions accordingly must require such periodic appearances by sex offenders who reside or are employees or students in the jurisdiction, since sex offenders must register in the jurisdictions of their residence, employment, and school attendance, as explained in Part VIII of these Guidelines. As with other SORNA requirements, jurisdictions may require in-person appearances by sex offenders with greater frequency than the minimum required by section 116.

The in-person appearance requirements of section 116 further the purposes of sex offender registration and notification in a number of ways. A sex offender's physical appearance, like that of any other person, will change in the course of time. The in-person appearance requirements provide reasonably frequent opportunities to obtain a photograph of the sex offender and a physical description that reflects his or her current appearance, types of registration information that are required by section 114(b)(1), (4). The in-person appearances further provide an opportunity to review with the sex offender the full range of information in the registry, and to obtain from the sex offender information about any changes in the registration information or new information that has not been reported since the initial registration or the last appearance.

Beyond these functions of directly helping to ensure the accuracy and currency of the registration information, the appearance requirement ensures periodic face-to-face encounters between the sex offender and persons responsible for his or her registration. For example, if the appearance requirement is implemented by a jurisdiction to require that registrants report to local police departments or sheriffs' offices, these meetings help to familiarize law enforcement personnel with the sex offenders in their areas. This may contribute to the effective discharge of the local law enforcement agency's protective and investigative functions in relation to these sex offenders, and help to ensure that the agency's responsibility to track these sex offenders is taken seriously and consistently enforced. Likewise, from the perspective of the sex offender, periodic in-person encounters with officials responsible for their monitoring may help to impress on them with greater vividness than remote communications that their identities, locations, and past criminal conduct are known to the authorities. Hence, there is a reduced likelihood of their avoiding detection and apprehension if they reoffend, and this may help them to resist the temptation to reoffend.

As long as the appearances involve meetings between the sex offenders and officials who can carry out the required functions of the meetings, the specific arrangements for such appearances and the officials who will conduct them are matters that jurisdictions may determine in their discretion. For example, jurisdictions may require sex offenders to report to local law enforcement offices for this purpose, or may combine the appearances with meetings between sex offenders and their supervision officers if they are under supervision, or may have law enforcement, supervision, or registration personnel visit with sex offenders at their homes or meet with them at other arranged locations.

The specific requirements for the conduct of such appearances are as follows: Appearances must be conducted at least annually for sex offenders satisfying the ''tier I'' criteria, at least semiannually for sex offenders satisfying the ''tier II'' criteria, and at least quarterly for sex offenders satisfying the ''tier III'' criteria. (The ''tier'' classifications and what they entail are explained in Part V of these Guidelines.)

The sex offender must allow a current photograph to be taken. This does not mean that jurisdictions must require officials conducting these meetings to take a new photograph at every appearance and enter the new photograph into the registry. Where the official sees that the sex offender's appearance has not changed significantly from a photograph in the registry, it may be concluded that the existing photograph remains sufficiently current and the taking of a new photograph does not have to be required in such circumstances.

The sex offender must be required to review the existing information in the registry that is within his or her knowledge, to correct any item that has

changed or is otherwise inaccurate, and to provide any new information there may be in the required registration information categories.

Upon entry of the updated information into the registry, it must be immediately transmitted by electronic forwarding to all other jurisdictions: (i) In which the sex offender is or will be required to register as a resident, employee, or student, or (ii) in which the sex offender was required to register as a resident, employee, or student until the time of a change of residence, employment, or student status reported in the appearance, even if the sex offender may no longer be required to register in that jurisdiction in light of the updated information. (This is necessary to carry out information sharing requirements appearing in SORNA §§ 119(b) and 121(b)(3).)

It may come to the attention of a jurisdiction's registration authorities that a sex offender has died when the sex offender fails to appear for a scheduled appearance under section 116 or by other means. While SORNA does not address the updating of registration information in such circumstances, jurisdictions are encouraged, as a matter of sound policy, to promptly update the information in the registry and the jurisdiction's public sex offender Web site to reflect the registrant's death, and to notify any other jurisdiction in which he was required to register. This does not necessarily mean, however, that all references to the sex offender should be removed from the registry and the Web site. Maintenance of historical information concerning a sex offender in the registry—together with the information that he is deceased—may remain of value, for example, in facilitating the solution of crimes he committed before his death by showing where he was at the time of the crimes. Likewise, maintenance of a public Web site posting for the sex offender (including the information that he is deceased) may remain of value since, for example, such a posting could enable victims of his crimes who have been checking on his status and location to ascertain that he is no longer alive.

Like other SORNA registration requirements, the in-person appearance requirements of section 116 are only minimum standards. They do not limit, and are not meant to discourage, adoption by jurisdictions of more extensive or additional measures for verifying registration information. Thus, jurisdictions may require verification of registration information with greater frequency than that required by section 116, and may wish to include in their systems additional means of verification for registration information, such as mailing address verification forms to the registered residence address that the sex offender is required to sign and return, and cross-checking information provided by the sex offender for inclusion in the registry against other records systems. Section 631 of the Adam Walsh Act (P.L. 109–248) authorizes a separate grant program to assist in residence address verification for sex offenders. Additional guidance will be provided concerning application for grants under that program if funding for the program becomes available.

XII. Duration of Registration

Section 115(a) of SORNA specifies the minimum required duration of sex offender registration. It generally requires that sex offenders keep the registration current for 15 years in case of a tier I sex offender, for 25 years in case of a tier II sex offender, and for the life of the sex offender in case of a tier III sex offender, ''excluding any time the sex offender is in custody or civilly committed.'' (The tier classifications and their import are explained in Part V of these Guidelines.) The required registration period begins to run upon release from custody for a sex offender sentenced to incarceration for the registration offense, and begins to run at the time of sentencing for a sex offender who receives a nonincarcerative sentence for the offense.

The proviso relating to custody or civil commitment reflects the fact that the SORNA procedures for keeping up the registration—including appearances to report changes of residence or other key information under section 113(c), and periodic appearances for verification under section 116—generally presuppose the case of a sex offender who is free in the community. Where a sex offender is confined, the public is protected against the risk of his reoffending in a more direct way, and more certain means are available for tracking his whereabouts. Hence, SORNA does not require that jurisdictions apply the registration procedures applicable to sex offenders in the community during periods in which a sex offender is in custody or civilly committed.

However, jurisdictions are not required to ''toll'' the running of the registration period during such subsequent periods of confinement. For example, consider a sex offender released from imprisonment in 2010 who is subject to 25 years of registration under the SORNA standards as a tier II offender, where the sex offender is subsequently convicted during the registration period for committing a robbery and imprisoned for three years for that offense. If the jurisdiction would otherwise require the sex offender to register until 2035 (the 25 year SORNA minimum), it may wish to extend that to 2038 so that the three years the sex offender spent in prison for the robbery is effectively not credited towards the running of the registration period. But that is a matter in the jurisdiction's discretion. Terminating the registration in 2035 would also be consistent with SORNA's requirements.

Subsection (b) of section 115 allows the registration period to be reduced by 5 years for a tier I sex offender who has maintained a ''clean record'' for 10 years, and allows registration to be terminated for a tier III sex offender required to register on the basis of a juvenile delinquency adjudication if the sex offender has maintained a ''clean record'' for 25 years. (The circumstances in which registration is required on the basis of juvenile delinquency adjudications are explained in Part IV.A of these Guidelines.) There is no authorization to reduce the required 25-year duration of registration for tier II sex offenders, or to reduce the required lifetime registration for tier III sex offenders required to register on the basis of adult convictions.

The specific requirements under section 115(b) to satisfy the ''clean record'' precondition for reduction of the registration period are as follows:

The sex offender must not be convicted of any offense for which imprisonment for more than one year may be imposed (§ 115(b)(1)(A)).

The sex offender must not be convicted of any sex offense (§ 115(b)(1)(B)). In contrast to section 115(b)(1)(A), section 115(b)(1)(B) is not limited to cases in which the offense is one potentially punishable by imprisonment for more than a year. Hence, conviction for a sex offense prevents satisfaction of the ''clean record'' requirement, even if the maximum penalty for the offense is less than a year.

The sex offender must successfully complete any periods of supervised release, probation, and parole (§ 115(b)(1)(C)). The requirement of ''successfully'' completing periods of supervision means completing these periods without revocation.

The sex offender must successfully complete an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General (§ 115(b)(1)(D)). Jurisdictions may make their own decisions concerning the design of such treatment programs, and jurisdictions may choose the criteria to

be applied in determining whether a sex offender has ''successfully'' completed a treatment program, which may involve relying on the professional judgment of the persons who conduct or oversee the treatment program.

XIII. Enforcement of Registration Requirements

This final part of the Guidelines discusses enforcement of registration requirements under the SORNA provisions. It initially discusses the penalties for registration violations under SORNA, and then the practical procedures for investigating and dealing with such violations.

SORNA contemplates that substantial criminal penalties will be available for registration violations at the state, local, and federal levels. Section 113(e) of SORNA requires jurisdictions (other than Indian tribes) to provide a criminal penalty that includes a maximum term of imprisonment greater than one year for the failure of a sex offender to comply with the SORNA requirements. Hence, a jurisdiction's implementation of SORNA includes having a failure-to-register offense for which the maximum authorized term of imprisonment exceeds a year. (Indian tribes are not included in this requirement because tribal court jurisdiction does not extend to imposing terms of imprisonment exceeding a year.) Section 141(a) of SORNA enacted 18 U.S.C. 2250, a new federal failure-to-register offense, which provides federal criminal penalties of up to 10 years of imprisonment for sex offenders required to register under SORNA who knowingly fail to register or update a registration as required where circumstances supporting federal jurisdiction exist, such as interstate or international travel by a sex offender, or conviction of a federal sex offense for which registration is required. Federal sex offenders are also required to comply with the SORNA registration requirements as mandatory conditions of their federal probation, supervised release, or parole, as provided pursuant to amendments adopted by section 141(d)–(e), (j) of SORNA.

In terms of practical enforcement measures, SORNA § 122 requires that an appropriate official notify the Attorney General and appropriate law enforcement agencies of failures by sex offenders to comply with registration requirements, and that such registration violations must be reflected in the registries. The section further provides that the official, the Attorney General, and each such law enforcement agency are to take any appropriate action to ensure compliance. Complementary measures for federal enforcement appear in section 142, which directs the Attorney General to use the resources of federal law enforcement, including the United States Marshals Service, to assist jurisdictions in locating and apprehending sex offenders who violate registration requirements. (Also, SORNA § 623 authorizes grants by the Attorney General to states, local governments, tribal governments, and other public and private entities to assist in enforcing sex offender registration requirements—additional guidance will be provided concerning application for grants under this provision if funding is made available for this program.)

Translating the requirements of section 122 into practical procedures that will ensure effective enforcement of sex offender registration requires further definition. Jurisdictions can implement the requirements of section 122 by adopting the following procedures:

Information may be received by a jurisdiction indicating that a sex offender has absconded—i.e., has not registered at all, or has moved to some unknown place other than the registered place of residence. For example, a sex offender may fail to make a scheduled appearance for periodic verification of registration information in his jurisdiction of residence as required by SORNA § 116, or may fail to return an address verification form mailed to the registered address in a jurisdiction that uses that verification procedure. Or a jurisdiction may receive notice from some other jurisdiction providing grounds to expect that a sex offender will be coming to live in the jurisdiction—such as notice that a sex offender will be moving to the jurisdiction from a jurisdiction in which he was previously registered, or notice from federal authorities about the expected arrival in the jurisdiction of a released federal sex offender or sex offender entering the United States from abroad—but the sex offender then fails to appear and register as required. Or a jurisdiction may notify another jurisdiction, based on information provided by a sex offender, that the sex offender will be relocating to the other jurisdiction, but the supposed destination jurisdiction thereafter informs the original registration jurisdiction that the sex offender has failed to appear and register.

When such information is received by a jurisdiction indicating that a sex offender may have absconded, whether one registered in the jurisdiction or expected to arrive from another jurisdiction, an effort must be made to determine whether the sex offender has actually absconded. If non-law enforcement registration personnel cannot determine this, then a law enforcement agency with jurisdiction to investigate the matter must be notified. Also, if the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, the authorities that provided the notification must be informed that the sex offender has failed to appear and register. If a jurisdiction receives information indicating that a sex offender may have absconded, as described in the preceding bullets, and takes the measures described therein but cannot locate the sex offender, then the jurisdiction must take the following steps:

The information in the registry must be revised to reflect that the sex offender is an absconder or unlocatable.

A warrant must be sought for the sex offender's arrest, if the legal requirements for doing so are satisfied.

The United States Marshals Service, which is the lead federal agency for investigating sex offender registration violations, must be notified. Also, the jurisdiction must update the National Sex Offender Registry to reflect the sex offender's status as an absconder or unlocatable and enter the sex offender into the National Crime Information Center Wanted Person File (assuming issuance of a warrant meeting the requirement for entry into that file).

The foregoing procedures must be adopted for possible absconder cases to implement SORNA § 122. In addition, a jurisdiction's policies must require appropriate follow-up measures when information is received indicating violation of the requirement to register in jurisdictions of employment or school attendance, whether or not a violation of the requirement to register in jurisdictions of residence is implicated. Specifically, a jurisdiction may receive information indicating that a sex offender may be employed or attending school in the jurisdiction but has not registered as required—for example, failure by the sex offender to appear for a required periodic in-person appearance in the employment or school jurisdiction, as required by SORNA § 116, or failure by a sex offender to appear and register in the jurisdiction following receipt of notice from another jurisdiction that the sex offender is expected to be commencing employment or school attendance in the jurisdiction. In such cases, an effort must be made to determine whether the sex offender is actually employed or attending school in the jurisdiction but has failed to register. If (non-law enforcement) registration personnel cannot determine this, then a law

enforcement agency with jurisdiction to investigate the matter must be notified.

Dated: June 23, 2008.

Michael B. Mukasey,

Attorney General.

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Federal Register

Wednesday,
July 2, 2008

Part III

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2008; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5217-N–01]

Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2008

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on January 1, 2008 and ending on March 31, 2008.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500, telephone (202) 708–3055 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the first quarter of calendar year 2008.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from January 1, 2008 through March 31, 2008. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR 58 would be listed before a waiver of a provision in 24 CFR 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the first quarter of calendar year 2008) before the next report is published (the second quarter of calendar year 2008), HUD will include any additional waivers granted for the first quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: June 24, 2008.

Robert M. Couch,

General Counsel.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development January 1, 2008 Through March 31, 2008

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory Waivers Granted by the Office of Community Planning and Development
II. Regulatory Waivers Granted by the Office of Housing
III. Regulatory Waivers Granted by the Office of Public and Indian Housing

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 58.22(a) and 24 CFR 58.43(a).

Project/Activity: The Miller project consisted of the development of 5.21 acres of land in Siletz, Oregon by the Confederated Tribes of Siletz Indians (CTSI). The development includes a maximum of 30 homes funded by approximately $5,897,890 of Indian Housing Block Grant funds from fiscal years 2001–2007. The CTSI purchased properties without conducting an environmental review and when a notice of a Finding of No Significant Impact (FONSI) was not mailed to interested parties and agencies.

Nature of Requirement: The first regulation, 24 CFR 58.22(a), requires

that an environmental review be performed and a Request for Release of Funds be completed and certified prior to the commitment of non-HUD funds to a project using HUD funds. The second regulation, 24 CFR 58.43(a), requires that notice be issued when a responsible entity makes a FONSI.

Granted by: Roy A. Bernardi, Deputy Secretary.

Date Granted: January 17, 2008.

Reason Waived: The waiver was granted based on the following findings: the project furthered objectives of the Indian Housing Block Grant Program; the errors made in the environmental process were made in good faith and were not willful violations; and a site review and environmental assessment concluded that the granting of a waiver would not result in adverse environmental impact.

Contact: Danielle Schopp, Office of Environment and Energy, Office of Community and Planning Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7250, Washington, DC 20410–7000, telephone (202) 708–2470.

• *Regulation:* 24 CFR 58.22(a).

Project/Activity: The Heartland Hills project involved a $198,000 Economic Development Initiative Special Purpose grant for building rehabilitation, street and driveway construction, water line installation, and demolition preparation in Waverly, IA. The grant was issued to the Iowa Heartland Habitat for Humanity and Bremer County, IA, acted as Responsible Entity. Work was performed using non-HUD funds prior to the performance of an environmental review.

Nature of Requirement: The regulation requires that an environmental review be performed and a Request for Release of Funds be completed and certified prior to the commitment of non-HUD funds to a project using HUD funds.

Granted By: Nelson R. Bregón, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: February 5, 2008.

Reason Waived: The waiver was granted based on the following findings: the project furthered objectives of providing affordable housing of low-income residents; the errors made in the environmental process were made in good faith and were not willful violations; work ceased when the violation was discovered; and a site review and environmental assessment concluded that the granting of a waiver would not result in adverse environmental impact.

Contact: Danielle Schopp, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7250, Washington, DC 20410–7000, telephone (202) 708–2470.

• *Regulation:* 24 CFR 58.22(a).

Project/Activity: The Conrad Prebys Clubhouse and Youth Center was a Boys & Girls Club project that included two Economic Development Initiative Special Purpose grants in the amounts of $325,000 and $459,000. The facility is located in Santee, CA, which also acted as the Responsible Entity. Work was performed using non-HUD funds to construct the project prior to the performance of an environmental review.

Nature of Requirement: The regulation requires that an environmental review be performed and a Request for Release of Funds be completed and certified prior to the commitment of non-HUD funds to a project using HUD funds.

Granted by: Nelson R. Bregón, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: March 4, 2008.

Reason Waived: The waiver was granted based on the following findings: the project furthered objectives of community development; the errors made in the environmental process were made in good faith and were not willful violations; and an environmental assessment concluded that the granting of a waiver will not result in adverse environmental impact.

Contact: Jerimiah Sanders, Office of Environment and Energy, Office of Community and Planning Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7250, Washington, DC 20410–7000, telephone (202) 708–2470.

• *Regulations:* 24 CFR 92.214(a)(1) and 24 CFR 92.214(a)(6).

Project/Activity: The State of Nebraska's Department of Economic Development requested a waiver of the HOME Program regulations 24 CFR 92.214(a)(1) and 24 CFR 92.214(a)(6) for three troubled HOME rental projects which were initially under-funded and underwritten to carry unacceptably high debt in relation to potential net operating income. The waiver permitted additional HOME funds to be provided and permitted HOME funds to be used for operating reserves to ensure viability of these projects. The additional HOME investment would be supplemented by the Nebraska Housing Trust Funds and would permit the State to retain 82 at-risk units as affordable rental housing.

Nature of Requirement: The HOME regulations at 24 CFR 92.214(a)(6) state that, except for the 12 months following project completion, additional HOME assistance may not be provided to a previously-assisted HOME project during the period of affordability. The HOME regulations at 24 CFR 92.214(a)(1) prohibits the use of HOME funds to capitalize project reserve accounts, except for initial operating deficit reserves not to exceed 18 months, as permitted under 24 CFR 92.206(d)(5).

Granted by: Nelson R. Bregón, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: March 14, 2008.

Reason Waived: HUD examined the workout plan for these projects and determined that it was desirable to facilitate continued operation of these properties as HOME assisted affordable rental housing. The additional HOME investment would stabilize the eight HOME units that are in compliance for the remainder of their affordability period, correct the previous noncompliance of thirty-one HOME units by restarting their affordability periods, and add an additional forty-three units which would carry HOME restrictions. These waivers permitted the State to retain 82 at-risk units as affordable housing.

Contact: Virginia Sardone, Director, Policy and Programs Division, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7158, Washington, DC 20410–7000, telephone (202) 402–4808.

• Regulations: 24 CFR 91.105(c); 24 CFR 92.203(a)(1) and (2) (HOME regulations), and 24 CFR 92.610(c) (ADDI regulations); Section 212(c) of the HOME Investment Partnerships Act (the Act), and 24 CFR 92.207; Section 212(a)(3) of the Act, and 92.209(b), (c), (h), (i), (j), and (k); 24 CFR 92.209(h)(3); 24 CFR 92.222(b); 24 CFR 92.251 and 24 CFR 92.612(b); 24 CFR 92.209(i) and 24 CFR 92.251(d); Section 225(d) of the Act, and 24 CFR 92.253(d); Section 215(b)(1) of the Act, and 24 CFR 92.254(a)(2); Section 231 of the Act and 24 CFR 92.300(a)(1); Section 271(c)(1) of the Act, and 24 CFR 92.602(a)(1); 24 CFR 92.353(e), and 24 CFR 42.375; 24 CFR 42.350(e)(1); 24 CFR 92.353(b)(2)(iii); Section 288 of the Act.

Project/Activity: The State of Oregon requested that HUD suspend HOME statutory requirements and waive HOME regulations to facilitate its recovery from the devastation caused by the Northwest December Storm for Clatsop, Columbia, Lincoln, Polk, Tillamook, and Yamhill counties. These

counties are located within a declared disaster area pursuant to Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Nature of Requirement: The requirements waived are as follows: § 91.105(c)—Citizen Participation Plan requirement to provide not less than 30 days for citizen comment to changes to the Consolidated Plan; § 92.203(a)(1) and (2) (HOME), and § 92.610(c) (ADDI)—Source Documentation for Income Determinations; Section 212(c) (Act) and 92.207—Limitation on Use of HOME funds for Administrative Costs; Section 212(a)(3) (Act) and 92.209(b), (c), (h), (i), (j) and (k)—Tenant-based Rental Assistance (TBRA): Eligible Costs and Requirements; § 92.209(h)(3)—Rent Standards for Tenant-based Rental Assistance (TBRA); 92.222(b)—Reduction of matching contribution requirement; § 92.251 and 92.612(b)—Property Standards for Units Rehabilitated with HOME and ADDI Assistance; § 92.209(i) and § 92.251(d)—Property Standards for Tenant-based Rental Assistance (TBRA); Section 225(d) of the Act and § 92.253(d)—Tenant and Participation Protections; Section 215(b)(1) of the Act and § 92.254(a)(2)—Homeownership Housing Maximum Values/Sales Price Limitation; Section 231 (Act) and § 92.300(a)(1)—Set-aside for Community Housing Development Organizations (CHDO); Section 271(c)(1) of the Act and § 92.602(a)(1)—First-time Homebuyer Requirement for ADDI; 92.353(e) and 42.375—Section 104(d) One-for-One Replacement Housing; § 92.353(e) and 42.350(e)(1)—Replacement Housing Assistance; 92.353(b)(2)(iii)—Decent, Safe and Sanitary Standard; and, Section 288 of the Act—Environmental Review Requirements.

Granted by: Nelson R. Bregón, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: February 4, 2008.

Reasons Waived: Due to the severity of the storm damage from the Northwest December Storm, the Department determined there was good cause to waive the above requirements.

Contact: Virginia Sardone, Director, Policy and Programs Division, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7158, Washington, DC 20410–7000, telephone (202) 402–4808.

• *Regulations:* 24 CFR 92.203(a)(1) and (2) (HOME), and 24 CFR 92.610(c) (ADDI); Section 212(a)(3) of the Act, and 92.209(b), (c), (h), (i), (j) and (k); 24 CFR 92.209(h)(3); 24 CFR 92.222(b); 24 CFR 92.251 and 24 CFR 92.612(b); 24 CFR 92.209(i) and 24 CFR 92.251(d); Section 225(d) of the Act, and 24 CFR 92.253(d); and 24 CFR 92.353(d).

Project/Activity: The State of Washington requested that HUD suspend statutory requirements and waive HOME regulations to facilitate the recovery from the displacement of households and/or the damage to homes caused by the severe storm and flooding occurring in December 2007 in the following counties: Clallam, Grays Harbor, King, Kitsap, Lewis, Mason, Pacific, Snohomish, Thurston and Wahkiakum Counties. These Counties are in a declared disaster area pursuant to Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Nature of Requirement: The requirements are as follows: 24 CFR 92.203(a)(1) and (2) (HOME), and 24 CFR 92.610(c) (ADDI)—requiring that initial income determinations for HOME and ADDI beneficiaries be made using source documentation; Section 212(a)(3) of the Act, and 92.209(b), (c), (h), (i), (j) and (k) governing the HOME TBRA program; 24 CFR 92.209(h)(3)—requiring TBRA rent payments may not exceed the difference between the rent standard and 30 percent of the families' adjusted income; 24 CFR 92.222(b)—reducing the matching requirements; 24 CFR 92.251 and 24 CFR 92.612(b)—requiring housing assisted with HOME or ADDI funds meet certain property standards; 24 CFR 92.209(i) and 24 CFR 92.251(d)—providing that units occupied by recipients of HOME TBRA meet the Housing Quality Standards (HQS); Section 225(d) of the Act, and 24 CFR 92.253(d)—requiring written tenant selection policies and procedures; and 24 CFR 92.353(d)—requiring a written relocation policy.

Granted by: Nelson R. Bregón, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: February 21, 2008.

Reason Waived: Pursuant to Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, President George W. Bush declared a major disaster for Clallam, Grays Harbor, King, Kitsap, Lewis, Mason, Pacific, Snohomish, Thurston and Wahkiakum Counties in the State of Washington as a result of a severe storm and flooding occurring in December 2007. Section 290 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA), as amended, authorizes HUD to suspend certain HOME statutory and regulatory requirements for HOME participating jurisdictions located within Presidential declared disaster areas. It was determined that the waiver would facilitate the continued recovery of these counties.

Contact: Virginia Sardone, Director, Policy and Programs Division, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7158, Washington, DC 20410–7000, telephone (202) 402–4808.

• *Regulations:* 24 CFR 92.251(a)(1).

Project/Activity: Shelby County, Tennessee, requested a waiver to facilitate its recovery from damage caused by severe storms, tornadoes, straight-line winds, and flooding. The County was declared a major disaster area pursuant to Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Nature of Requirement: Section 92.251(a)(1) of the HOME regulations in 24 CFR part 92 requires that housing assisted with HOME funds meet specific property and rehabilitation standards.

Granted by: Nelson R. Bregón, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: March 27, 2008.

Reasons Waived: It was determined that the waiver would facilitate the recovery of Shelby County from the damage caused by the severe storms, tornados and flooding of March and April 2006. The waiver would allow the County to make emergency repairs to storm-damaged, owner-occupied units and return these units to habitability more quickly, which would help the county to meet the critical housing needs of families whose homes were damaged and increase the number of assisted households.

Contact: Virginia Sardone, Director, Policy and Programs Division, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7158, Washington, DC 20410–7000, telephone (202) 402–4808.

• *Regulations:* 24 CFR 91.115(b)(4) and 24 CFR 91.115(i).

Project/Activity: The State of Oregon requests a waiver of the Community Development Block Grant (CDBG) regulation at 24 CFR 91.115(b)(4).

Nature of Requirement: Provisions of CDBG regulations at 24 CFR 91.115(b)(4) require that a minimum of thirty days be allowed for public comments to the changes to the Method of Distribution (MOD); while 24 CFR 91.115(i) requires the State to follow its citizen participation plan.

Granted by: Nelson R. Bregón, Assistant Secretary, Community Planning and Development.

Date Granted: February 01, 2008.

Reason Waived: A waiver of 91.115(b)(4), which provided reduced public comment period from 30 days to 3 days, would allow the State to implement the amendment to the 2008 MOD and annual action plan expeditiously and enable the State to provide assistance to affected units of general local government (UGLG) for disaster recovery in a timely manner. A waiver of 24 CFR 91.115(i) was determined necessary to permit the state to deviate from its citizen participation plan.

Contact: Diane Lobasso, Director, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7184, Washington, DC 20410–7000, telephone (202) 402–2191.

• *Regulation:* 24 CFR 570.489(a)(1)(i) and (iii), *Statutes:* 42 U.S.C. 5306(d)(3)(A), (d)(6), as revised and renumbered by Public Law 108–199, Section 423 (and formerly codified as 42 U.S.C. 56306(d)(3)(A).

Project/Activity: The State of Oregon requested statutory suspension of 42 U.S.C. 5306(d)(3)(A), (d)(5) and (d)(6), Section 105(d)(3)(A) of the Housing and Community Development Act (HCDA); and a waiver of CDBG regulation at 24 CFR 570.489 (a)(1), (3).

Nature of Requirements: Provisions of CDBG statutes at 42 U.S.C. 5306(d)(3)(A)(d)(6) and the regulations at 24 CFR 570.489(a)(1)(i) and (iii), establish the State CDBG administrative cap at 2% and match requirements exceeding $100,000. Section 106(d) of the HCDA, allows grantees to use up to 2% of their allocation on state administration, 1% for technical assistance, or 3% of a combination thereof, in addition to $100,000 for administration without having to provide a match.

Granted by: Nelson R. Bregón, General Deputy Assistant Secretary, Community Planning and Development.

Date Granted: February 01, 2008.

Reason Waived: Due to the flood devastation, additional administrative funds were determined needed to assist the State of Oregon to recover from the disaster. By suspending the 2% administration cap and allowing use of matching funds for other purposes, the state would be able to administer its program and use CDBG funds needed in communities affected by the flood. This waiver would allow the State to provide additional administrative funds (from 2% to 4%) and remove the requirement that the State must match the amount of administrative expenses in excess of $100,000 that are used for disaster recovery activities. The State was not permitted to exceed the overall planning, management and administrative cap of 20 percent pursuant to 24 CFR 570.489(a)(3).

Contact: Diane Lobasso, Director, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7184, Washington, DC 20410–7000, telephone (202) 402–2191.

• *Regulation:* 24 CFR 570.486(a)(5).

Project/Activity: The State of Oregon requested a waiver of CDBG regulation at 24 CFR 570.486(a)(5).

Nature of Requirement: Provisions of CDBG regulation at 24 CFR 570.486(a)(5) require each UGLG to provide for a minimum of two public hearings at different stages of a CDBG-funded activity to ensure local citizen participation.

Granted by: Nelson R. Bregón, General Deputy Assistant Secretary, Community Planning and Development.

Date Granted: February 01, 2008.

Reason Waived: Allowing the UGLG to conduct only one public hearing would expedite application processing and the provision of CDBG funds to the UGLG.

Contact: Diane Lobasso, Director, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7184, Washington, DC 20410–7000, telephone (202) 402–2191.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Hickory Hollow Cooperative I, Wayne, Michigan—FHA Project Number 044–55190. The owner is requesting waiver of the regulations that require repayment of the flexible subsidy loan and approval of a 30-year amortization of the flexible subsidy loan at a 1 percent interest rate.

Nature of Requirement: Section 219.220(b) governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy loan would be repaid, in whole, at that time.''

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 11, 2008.

Reason Waived: The project has maintained affordability under the Section 221(d)(3) BMIR program and consistently received REAC scores above 60 since 2001. The project requires renovations to continue as a well-maintained source of affordable housing. By allowing waiver of this regulation, the project would remain as a cooperative. The owner would be allowed to prepay the existing mortgage, obtain financing to perform rehabilitation of the property, allow the amortization of the flexible subsidy loans with the new mortgage, and provide sufficient funds for the property's needed capital improvements.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Hickory Hollow Cooperative II, Wayne, Michigan—FHA Project Number 044–44151. The owner is requesting waiver of the regulations that require repayment of the flexible subsidy loan and approval of a 30-year amortization of the flexible subsidy loan at a 1 percent interest rate.

Nature of Requirement: Section 219.220(b) governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy loan would be repaid, in whole, at that time.''

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 11, 2008.

Reason Waived: The project has maintained affordability under the Section 221(d)(3) BMIR program and

consistently received REAC scores above 60 since 2001. The project requires renovations to continue as a well-maintained source of affordable housing. By allowing waiver of this regulation, the project would remain as a cooperative, the owner would be allowed to prepay the existing mortgage, obtain financing to perform rehabilitation of the property, allow the amortization of the flexible subsidy loans with the new mortgage, and provide sufficient funds for the property's needed capital improvements.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 236.60(e).

Project/Activity: Remeeder Houses, Brooklyn, New York—FHA Project Number 012–44023. The owner has proposed to waive required submission of HUD-Form 93014, Monthly Report of Excess Income, in support of the sale and litigation of the property.

Nature of Requirement: Section 236.60(e) provides guidelines for retaining excess income. Excess income is defined as cash collected as rent from the residents by the mortgagor on a unit-by-unit basis, that is in excess of the HUD-approved unassisted Basic Rent. The mortgagor must submit a request to retain Excess Income at least 90 days before the beginning of each fiscal year or any other date during a fiscal year that the mortgagor plans to begin retaining Excess Income for that fiscal year. If HUD, following review of the request, approves the request the mortgagor will not be required to submit a new request each fiscal year provided the use of Excess Income remains the same.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 18, 2008.

Reason Waived: The proposed sale and redevelopment of the project that includes tax-exempt bonds with low-income housing tax credits would restore the project to a decent, safe and sanitary condition for all tenants. The sale would assure that all HUD debt is paid, the mortgage is no longer HUD-Held and the project would remain an affordable housing resource for an additional 30 years through the execution of the Use Agreement as part of the Section 236 decoupling transaction.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 290.30(a)

Project/Activity: Oakwood Gardens, Mount Vernon, New York—FHA Project Numbers: 012–57139V and 012–57139W. The owner has requested prepayment approval of their two HUD-Held mortgages. In addition, they are requesting the Department to assign the mortgages to the purchasing entity's new mortgagee, for mortgage recording tax savings in the State of New York.

Nature of Requirement: HUD's regulations governing the sale of HUD-Held mortgages are set forth in 24 CFR Part 290, subpart B, Section 290.30(a) of those regulations state that ''[e]xcept as otherwise provided in Section 290.31(a)(2), HUD will sell HUD-Held multifamily mortgages on a competitive basis.'' Section 290.31(a)(2) permits ''negotiated'' sales to state or local governments for mortgage loans that are current and secured by subsidized projects, provided such loans are sold with FHA insurance.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 8, 2008.

Reason Waived: Waiver of the regulations covering the sale of HUD-Held mortgages to allow the non-competitive sale of the HUD-Held mortgages securing the project with FHA insurance has been approved. Good cause having been shown it is in the public interest, and consistent with the Secretary's objectives to waive the appropriate regulations in order to permit the non-competitive sale to Intervest National Bank. HUD will be paid in full for all three current mortgage loans at closing of this transaction.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730, extension 2598.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Baptist Retirement Village II, Gadsden, AL, Project Number: 062 EE080/AL09–S061–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 8, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Mosaic Housing XVI-Farmington, Farmington, NM, Project Number: 116–HD029/NM16–Q061–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 13, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: AASC Housing II, Anchorage, AK, Project Number: 176–HD027/AK06–Q051–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 13, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: San Clemente Villas, Plant City, FL, Project Number: 067–EE143/FL29–S061–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 16, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Rolling Meadows Senior Living, Taylorville, IL, Project Number: 072–EE167/IL06–S061–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 20, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: St. Bernadette Manor II, Opelousas, LA, Project Number: 064–EE029/LA48–S061–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 20, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Warren-Yazoo Mental Health Services, Vicksburg, MS, Project Number: 065–HD037/MS26–Q051–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 23, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Kiamichi Place Senior Housing, Antlers, OK, Project Number: 118–EE045/OK56–S061–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 23, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Harvard Supportive Housing Development, Harvard, IL, Project Number: 071–HD154/IL06–Q061–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 23, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Apostles Village, Brandon, FL, Project Number: 067–EE137/FL29–S051–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 23, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Rosewood Apartments, Erie, PA, Project Number: 033–HD101/PA28–Q061–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 29, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Wilson Court II, Little Rock, AR, Project Number: 082–HD096/AR37–Q061–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 5, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Candice Home, Crete, IL, Project Number: 071–HD153/IL06–Q051–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 5, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Harvard Supportive Housing Development, Harvard, IL, Project Number: 071–HD154/IL06–Q061–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 5, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulations:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Senior Living at Prouty, Spencer, MA, Project Number: 023–EE183/MA06–S051–000.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 7, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Bristol Place Apartments, Bryant, AR, Project Number: 082–EE170/AR37–S051–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 13, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Odenton Senior Housing II, Odenton, MD, Project Number: 052–EE056/MD06–S061–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 19, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Village of Hope, Columbia, TN, Project Number: 086–HD038/TN43–Q061–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 21, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: TELACU La Esperanza, Pomona, CA, Project Number: 122–EE199/CA16–S051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 10, 2008.

Reason Waived: The sponsor/owner needed additional time to obtain approval of the project's design from the city and additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Project Beginnings I, Akron & Lakemore Village, Akron, OH,

Project Number: 042–HD129/OH12–Q051–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 13, 2008.

Reason Waived: The sponsor/owner needed additional time for the firm commitment to be issued and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: D Street Senior Housing, Ontario, CA, Project Number: 143–EE060/CA43–S051–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 16, 2008.

Reason Waived: The sponsor/owner needed additional time to secure additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Morning Star Senior Residences, Rock Island, IL, Project Number: 071–EE216/IL06–S051–011.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 16, 2008.

Reason Waived: The sponsor/owner needed additional time for a new site to be approved, the firm commitment to be issued and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Southern Breeze, Eunice, LA, Project Number: 064–EE199/LA48–S051–015.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 22, 2008.

Reason Waived: The sponsor/owner needed additional time for the firm commitment application to be resubmitted and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hughes Homes, Catonsville, MD, Project Number: 052–HD070/MD06–Q051–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 22, 2008.

Reason Waived: The sponsor/owner needed additional time to resolve architectural plans and specification issues and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Mulberry Apartments, Wayne, WV, Project Number: 045–HD041/WV15–Q051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 23, 2008.

Reason Waived: The sponsor/owner needed additional time to secure additional funding and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Academy Place, Gowanda, NY, Project Number: 014–EE253/NY06–S051–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 23, 2008.

Reason Waived: Additional time was needed for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Ictineo Apartments, Hartford, CT, Project Number: 017–HD036/CT26–Q051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 23, 2008.

Reason Waived: The sponsor/owner needed additional time for a new site to be approved, the firm commitment to be issued and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh

Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Vista California Supportive Housing, Vista, CA, Project Number: 129–HD030/CA33–QO41–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 23, 2008.

Reason Waived: The sponsor/owner needed additional time to secure additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: West Bergen ILP 2005, Ridgewood, NJ, Project Number: 031–HD145/NJ39–Q051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 23, 2008.

Reason Waived: The sponsor/owner needed additional time to resolve design issues required by the Ridgewood Township Planning Board and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: OMHS Housing 2005, Barnegat, NJ, Project Number: 035–HD062/NJ39–Q051–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 23, 2008.

Reason Waived: The sponsor/owner needed additional time to obtain a new contractor and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: AASC Housing II, Anchorage, AK, Project Number: 176–HD027/AK06–Q051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 25, 2008.

Reason Waived: The sponsor/owner needed additional time to locate a new site, to submit the firm commitment application, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Apostles Village, Brandon, FL, Project Number: 067–EE137/FL29–S051–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 1, 2008.

Reason Waived: The sponsor/owner needed additional time to resolve issues concerning restrictive zoning, off-site drainage requirements and construction costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Grayson Bay Housing Corporation, Marshfield, WI, Project Number: 075–HD090/WI39–Q051–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 6, 2008.

Reason Waived: The sponsor/owner needed additional time to resolve site issues and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Project Beginning II, Cleveland, OH, Project Number: 042–HD130/OH12–Q051–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 13, 2008.

Reason Waived: The sponsor/owner needed additional time for the new site to be approved, for the firm commitment to be processed, and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Arbor Court, Fresno, CA, Project Number: 121–HD083/CA39–Q041–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 19, 2008.

Reason Waived: The sponsor/owner needed additional time to finalize

design issues, secure additional funding and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hogar Adventista, Naguabo, PR, Project Number: 056–EE070/RQ46–S051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 19, 2008.

Reason Waived: The sponsor/owner needed additional time to obtain the necessary permits for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Jawonio Residential Opportunities III, Rockland County, NY, Project Number: 012–HD119/NY36–Q031–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 20, 2008.

Reason Waived: Additional time was needed for the firm commitment to be issued and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Indian Rock Supportive Housing, Saugus, MA, Project Number: 023–EE175/MA06–S041–010.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 29, 2008.

Reason Waived: The sponsor/owner needed additional time to obtain a new contractor and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Kaaterskill Manor, Catskill, NY, Project Number: 014–EE252/NY06–S051–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 29, 2008.

Reason Waived: The sponsor/owner needed additional time to obtain final approval from the local planning and zoning boards and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Lyons Place, Dayton, OH, Project Number: 046–EE078/OH10–S051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 29, 2008.

Reason Waived: The sponsor/owner needed additional time to complete the firm commitment application and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Paschall Senior Housing, Philadelphia, PA, Project Number: 034–EE145/PA26–S051–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 29, 2008.

Reason Waived: The sponsor/owner needed additional time to obtain zoning approval and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Clearlake Oaks Manor, Clearlake Oaks, CA, Project Number: 121–EE174/CA39–S041–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 6, 2008.

Reason Waived: The sponsor/owner needed additional time to finalize the acquisition of the new site and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Toby House VII, Phoenix, AZ, Project Number: 123–HD039/AZ20–Q051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 6, 2008.

Reason Waived: The sponsor/owner needed additional time to secure sites, obtain a more experienced Architect, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Vernon Street Residence, Framingham, MA, Project Number: 023–HD222/MA06–Q051–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 7, 2008.

Reason Waived: The sponsor/owner needed additional time to complete the zoning approval process, for the firm commitment to be processed, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Folsom Oaks, Folsom, CA, Project Number: 136–HD017/CA30–Q041–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 7, 2008.

Reason Waived: The sponsor/owner needed additional time to resolve zoning issues, secure additional funds, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Convent Hill Apartments, Milwaukee, WI, Project Number: 075–EE133/WI39–S041–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 7, 2008.

Reason Waived: The sponsor/owner needed additional time to obtain a new contractor and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Harshfield Terrace, Quartz Hill, CA, Project Number: 122–EE195/CA16–S041–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 7, 2008.

Reason Waived: The sponsor/owner needed additional time to resolve entitlement issues, to review environmental plans, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Alex Apartments, West Carrollton, OH, Project Number: 046–HD032/OH10–Q051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 13, 2008.

Reason Waived: The sponsor/owner needed additional time to resolve litigation issues over the City's reversal of proper zoning and neighborhood opposition.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Mary Griffith House, Heavener, OK, Project Number: 118–HD036/OK56–Q051–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 17, 2008.

Reason Waived: The sponsor/owner needed additional time to obtain a new site, for the firm commitment to be processed, and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Kirkland Homes, Hagerstown, MD, Project Number: 052–HD068/MD06–Q051–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 26, 2008.

Reason Waived: The sponsor/owner needed additional time for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: MHA Mohr Place II, Wichita, KS, Project Number: 102–EE028/KS16–S051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 27, 2008.

Reason Waived: The sponsor/owner needed additional time for revisions to be made to the project's plans and specifications, for the firm commitment application to be reprocessed, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Lakeview Properties, Baltimore, MD, Project Number: 052–HD071/MD06–Q051–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 27, 2008.

Reason Waived: Additional time was needed for the firm commitment application to be processed and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Bristol Place Apartments, Bryant, AR, Project Number: 082–EE170/AR37–S051–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 27, 2008.

Reason Waived: The sponsor/owner needed additional time for the firm commitment to be issued and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Homes of Care I, Lawrence, MA, Project Number: 023–HD218/MA06–Q041–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 27, 2008.

Reason Waived: The sponsor/owner needed additional time for initial closing to take place.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Ohana Homes, Sykesville, MD, Project Number: 052–HD067/MD06–Q051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 27, 2008.

Reason Waived: The sponsor/owner needed additional time for initial closing to take place.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.830(b).

Project/Activity: Hale Mahaolu Ehiku, Phase IB, Kihei, HI, Project Number: 140–EE028/HI10–S021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis. Section 891.830(b) requires that capital advance funds be drawn down only in an approved ratio to other funds in accordance with a drawdown schedule approved by HUD.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 24, 2008.

Reason Waived: Additional time was needed for issuance of a firm commitment and for the initial closing to occur. Also, because the other funding sources needed to be disbursed at a faster rate than a pro rata disbursement would allow.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.830(b) and 24 CFR 891.830(c)(4).

Project/Activity: Hale Mahaolu Ehiku, Phase II, Kihei, HI, Project Number: 140–EE035/HI10–S051–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis. Section 891.830(b) requires that capital advance funds be drawn down only in approved ratio to other funds in accordance with a drawdown schedule approved by HUD. Section 891.830(c)(4) prohibits the capital advance funds from paying off bridge or construction financing, or repaying or collateralizing bonds.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 26, 2008.

Reason Waived: Additional time was needed for the firm commitment to be issued and for the project to be initially/finally closed. Also, because the other funding sources needed to be disbursed faster than a pro rata disbursement would allow, and to permit capital advance funds to pay off the portion of the construction financing that strictly relate to capital advance eligible costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Caring Incorporated Senior Housing II, Pleasantville, NJ,

Project Number: 035–EE055/NJ39–S071–005.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax exemption status under Section 501(c)(3) or (c)(4) of the Internal Revenue Code.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 22, 2008.

Reason Waived: The required tax-exemption ruling from IRS is to be issued, but not in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Port Town Village II, Urbanna, VA, Project Number: 051–EE118/VA36–S071–003.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax exemption status under Section 501(c)(3) or (c)(4) of the Internal Revenue Code.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 23, 2008.

Reason Waived: The required tax-exemption ruling from IRS is to be issued, but not in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Ivy Residence II, Philadelphia, PA, Project Number: 034–EE153/PA26–S071–001.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax exemption status under Section 501(c)(3) or (c)(4) of the Internal Revenue Code.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 7, 2008.

Reason Waived: The required tax-exemption ruling from IRS was to be issued, but not in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.310(b)(1).

Project/Activity: Jawonio Residential Opportunties III, Rockland County, NY, Project Number: 012–HD119/NY36–Q031–004.

Nature of Requirement: Section 891.310(b)(1) requires that all entrances, common areas, units be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

Granted by: Brian D. Montgomergy, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 3, 2008.

Reason Waived: The design of the existing structure is such that it would not be economically or architecturally feasible to make both group homes feasible. However, one of the group homes would be feasible as well as over twenty-five (25) percent of the sponsor's other units are accessible.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 798–3000.

• *Regulation:* 24 CFR 891.310(b)(1) and 891.310(b)(2).

Project/Activity: Venture OPTS 2005, Suffern, NY, Project Number: 012–HD130/NY36–Q051–004.

Nature of Requirement: Section 891.310(b)(1) requires that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities. Section 891.310(b)(2) requires that a minimum of 10 percent of all bedrooms and bathrooms in a group home for the chronically mentally ill be accessible or adaptable for persons with disabilities.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 3, 2008.

Reason Waived: The design of three of the four existing single family homes is such that it would not be economically or architecturally feasible to make all four group homes accessible. One group home would be accessible and if additional accessible units were needed, the sponsor has other permanent housing projects which are accessible.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 798–3000.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Joy Court Village Apartments, Americus, Georgia—FHA Project Number 061–EE083. This project continues to experience difficulty in leasing its units to very low-income elderly tenants.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 26, 2008.

Reason Waived: This property is located in a largely rural area. The project had been experiencing difficulty in renting its units since initial occupancy in November 2002. Currently 17 of 20 units are occupied. There are three applicants that meet the age waiver criteria and were on a waiting list. The owner/managing agent continued to aggressively market the property with the local authorities, news media, churches and various civic organizations. The provisions of 24 CFR 891.410(c) were waived in order to allow the agent to continue to lease to individuals between the ages of 55 and 62 years of age, allowing the owner to maintain full occupancy and save the project from failing. Priority admission would continue for elderly applicants age 62 and over.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Cedar Ridge Apartments, Ravenden, Arkansas, FHA Project Number 082–EE128. The property is currently experiencing vacancy problems with two vacancies at the 12-unit property.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must

include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 26, 2008.

Reason Waived: This regulatory waiver was granted because if continued, the current vacancy rate would cause financial hardship for the project. The owner was unable to attract very low-income elderly persons. Appropriate and extensive advertising and outreach programs have been conducted, including marketing the property to the local housing authority and news media. The waiver was granted to allow the owner the ability to offer units to individuals who meet the definition of lower income, near elderly, which should increase occupancy levels at the property and, therefore, stabilize the project's current financial status. First priority will be given to all qualified eligible applicants who meet the Section 202 very low-income guidelines.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Cherry Hill Apartments, Spring City, Tennessee, FHA Project Number 087–EE006. The owner/managing agent requested waiver of the very low-income restriction and elderly restriction in order to permit admission of low-income elderly applicants.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 12, 2008.

Reason Waived: The property currently has 7 vacant units with no waiting list. The property is located in a rural setting and the local housing market indicates that there is not sufficient demand for very low-income elderly housing. The owner/managing agent continued to aggressively market the property with the local housing authorities and various religious, social and community organizations. It was determined that providing a waiver would allow the owner/managing agent an opportunity to stabilize the project's current financial status, and prevent foreclosure. First priority will be given to all qualified applicants who meet the Section 202 very low-income guidelines.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Christopher Homes of Strong, Strong, Arkansas—FHA Project Number 082–EE009. This project currently has 9 vacancies out of 20 units with no waiting list.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 21, 2008.

Reason Waived: A waiver of the very low-income and elderly restriction was granted in order to permit admission of lower-income (incomes between 51 and 80 percent of median) applicants where there are no very low-income elderly applicants to fill vacant units and allow a reduction of the age limit from 62 to 55 years of age for the subject project. The owner/managing agent reported a 45 percent vacancy rate despite aggressive marketing efforts. The local housing market indicated there is not sufficient demand for very low-income elderly housing. The waiver would allow flexibility to offer units to lower income, near elderly and, thus, the owner will be able to increase occupancy levels and, hopefully, achieve full occupancy. The project should not fail at full occupancy.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

Project/Activity: Oakwood Gardens, Mount Vernon, New York—FHA Project Numbers 012–57139V and 012–57139W. The owner has requested prepayment approval of their two HUD-Held mortgages. In addition, they are requesting the Department to assign the mortgages to the purchasing entity's new mortgagee, for mortgage recording tax savings in the State of New York.

Nature of Requirement: HUD's regulations governing the sale of HUD-Held mortgages are set forth in 24 CFR Part 290, subpart B, Section 290.30(a) of those regulations state that ''[e]xcept as otherwise provided in Section 290.31(a)(2), HUD will sell HUD-Held multifamily mortgages on a competitive basis.'' Section 290.31(a)(2) permits ''negotiated'' sales to state or local governments for mortgage loans that are current and secured by subsidized projects, provided such loans are sold with FHA insurance.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 8, 2008.

Reason Waived: Waiver of the regulations covering the sale of HUD-Held mortgages to allow the non-competitive sale of the HUD-Held mortgages securing the project with FHA insurance was approved. It was determined to be in the public interest and consistent with the Secretary's objectives to waive the appropriate regulations in order to permit the noncompetitive sale to Intervest National Bank. HUD would be paid in full for all three current mortgage loans at closing of this transaction.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Red Lake Senior Apartments, Red Lake, Minnesota—FHA Project Number 092–EE087. The property currently has 14 vacant units with no waiting list despite aggressive maketing and outreach efforts. The owner/managing agent has requested waiver of the age and income requirement to increase occupancy levels.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who

is at least 62 years of age at the time of initial occupancy.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 18, 2008.

Reason Waived: A waiver of the income requirement was granted to assist management in renting vacant units at this property. Currently there are 12 occupied units. The project is located in the exterior boundaries of the Red Lake Reservation, and is held in trust for the benefit of the Red Lake Band of Chippewa Indians. The owner/management agent was unable to attract very low-income elderly persons. The waiver would allow the project to fill vacant units and develop a waiting list by expanding their leasing options with low-income, and near elderly applicants.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• *Regulation:* 24 CFR 891.520.

Project/Activity: Peace Lake Towers, New Orleans, Louisiana—FHA Project Number 064–EH055. The Fort Worth Multifamily Property Disposition Center is requesting approval to permit the foreclosure use restriction to allow initial occupancy at 55 years of age vs. 62 years of age as required by the current Section 202 regulatory agreement and regulations.

Nature of Requirement: Section 891.520 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, and receive assistance under Section 8 of the United States Housing Act of 1937. Section 891.520 limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 9, 2008.

Reason Waived: This property, which consists of 130 units, has remained inoperable since August 2005 when it was affected by Hurricane Katrina. The Fort Worth Multifamily Disposition Center is processing a foreclosure due to the default of the mortgage and for the owner's failure to comply with provisions of the Regulatory Agreement and HAP Contract. Within the City of New Orleans, approximately 3,000 units are designated for the elderly. As part of the foreclosure terms, previous tenants would be offered the right of first refusal to return to the property once it has completed rehabilitation. Based on market conditions, there was a concern that many of the elderly tenants that relocated as a result of Hurricane Katrina had not returned to the market area. Lowering the minimum age of eligibility to occupy the property to age 55 would enhance economic feasibility should there be an insufficient number of potential residents over the age of 65 requiring affordable housing.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801.

Project Activity: Housing Authority of the City of Danbury (CT020), Danbury, CT.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: January 17, 2008.

Reason Waived: The HA requested a waiver for the removal of the Late Presumptive Failure (LPF) for the audited Financial Assessment Subsystem (FASS) Indicator for FYE December 31, 2006. The HA stated that due to a computer/server crash, the HA did not receive the financial submission rejection letter that resulted in the LPF. The waiver granted the HA invalidation of the LPF and resubmission of the audited financial data.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 4550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Housing Authority of the City of Gary, Indiana, (IN011), Gary, IN.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: January 17, 2008.

Reason Waived: The HA is a troubled agency and is currently under the HUD Recovery Administrator. The HA is completing the process to ensure compliance with the Generally Accepted Accounting Principles reporting requirements. The waiver granted the HA additional time to submit its audited financial data to the REAC.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 4550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Housing Authority of Salt Lake City, (UT004), Salt Lake City, UT.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: January 17, 2008.

Reason Waived: The HA requested a waiver for the removal of the Late Presumptive Failure (LPF) for the audited Financial Assessment Subsystem (FASS) Indicator for FYE December 31, 2006. The HA submitted the audited financial data, but it was subsequently rejected by REAC. While attempting to make changes and corrections, the HA realized the LPF had been issued. The waiver granted the HA invalidation of the LPF and resubmission of the audited financial data.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: North Iowa Regional Housing Authority (IA127), Mason City, IA.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: January 17, 2008.

Reason Waived: The HA's audited financial submission was rejected and not submitted on time resulting in a Late Presumptive Failure (LPF) score of zero due to the unavailability of limited staff involved in the process. The waiver granted the HA invalidation of the LPF and resubmission of the audited financial data.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Cambridge Economic Development Authority, (MN067), Cambridge, MN.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: January 18, 2008.

Reason Waived: The HA requested a waiver for the removal of the Late Presumptive Failure (LPF) score of zero for the audited Financial Assessment Subsystem (FASS) Indicator for FYE December 31, 2006. The HA and the auditor completed the first and second step of the three step audit submission process on October 12, 2007; however, the auditor failed to notify the HA that the process was completed and ready for submission to the REAC. Due to the miscommunication, the HA missed the submission due date that resulted in the LPF. The waiver granted the HA invalidation of the LPF and the resubmission of the audited financial data.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Alamosa Housing Authority, (CO004), Alamosa, CO.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 1, 2008.

Reason Waived: The HA requested a waiver of the audited financial reporting requirements because it was in the process of a fraud audit with the Office of the Inspector General (OIG). The Executive Director was placed on administrative leave and additional time was required to finalize the audit. The waiver granted additional time to the HA to submit its audited financial information to REAC.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: City of Marietta Housing Authority (OH077), Marietta, OH.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 1, 2008.

Reason Waived: The HA, a Section 8 only entity, requested a waiver of the audited financial reporting requirements under the Section 8 Program for FYE March 31, 2007. The Fiscal Officer advised that the grantee city of Marietta's FYE is December 31, 2007, while the FYE for the Housing Choice Voucher Program Office is March 31, 2007. The city is audited by the Ohio State Auditor, while the non-profit corporation that administers the voucher program, is audited by a different accounting firm. The HA was granted a waiver because the circumstances that prevented the HA from submitting the audited financial data were beyond the HA's control. Nevertheless, the HA has initiated steps to change its FYE to coincide with the city's FYE.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Housing Authority of the City of Slidell, (LA103), Slidell, LA.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 1, 2008.

Reason Waived: The HA requested a waiver of the audited financial reporting requirements for the FYE ending March 31, 2007. The HA stated that it had not received approval from the State of Louisiana Legislative Office to enter into an engagement with a Certified Public Accounting firm in order to conduct the audit. The waiver allowed the HA additional time to submit its audited financial data to REAC.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Peekskill Housing Authority, (NY082), Peekskill, NY.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted no later than nine months after the housing authority's (HA) fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 1, 2008.

Reason Waived: The HA was granted a waiver because the New York Field Office of HUD was conducting an investigation of the HA that delayed the completion of the audit. The circumstances that prevented the HA from submitting the audited financial data were beyond the HA's control. The waiver granted additional time for the HA to submit the audited financial data to the REAC.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Detroit Housing Commission, (MI001), Detroit, MI.

Nature of Requirement: The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the housing authority's (HA) fiscal year end. Audited financial statements are required no later than nine months after the HA's fiscal year end in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 29, 2008.

Reason Waived: The HA requested a waiver for additional time to submit the unaudited and audited financial data in order to allow the contracted appraiser to finish the real estate valuation of the property transferred from the City of Detroit to the HA. This allowed the auditor to complete the financial statement process to the Real Estate Assessment Center (REAC). The waiver granted the HA additional time to submit unaudited and audited financial data to the REAC.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Center, Office of Public and Indian Housing, Department of Housing and Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Housing Authority of the City of Westminster (MD027), Westminster, MD.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 5, 2008.

Reason Waived: The HA requested a waiver of the due date of March 31, 2008, for the resubmission of their audited financial data for FYE June 30, 2007. The city engaged a firm to perform the audit and submitted the signed agreement. However, the agency underwent an accounting system change which precluded the generation of audit evidence until six months after the FYE. In addition, the Director of Finance responsible for generating the audit evidence was ill until early January 2008. The waiver granted the HA additional time to submit audited financial data.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Housing Authority of Brevard County, (FL020), Merritt Island, FL.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 19, 2008.

Reason Waived: The HA requested a waiver for the removal of the Late Presumptive Failure (LPF) score of zero for the audited Financial Assessment Subsystem (FASS) Indicator for FYE March 31, 2007. The HA and the auditor completed the first and second step of the three-step audit submission process. However, the auditor failed to notify the HA that the process was completed and ready for submission to the REAC. Due to the miscommunication, the HA missed the submission due date that resulted in the LPF. The waiver granted the HA invalidation of the LPF and the resubmission of the audited financial data.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Kent County Housing Commission (MI198), Grand Rapids, MI.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 24, 2008.

Reason Waived: The HA, a Section 8 only entity, requested a waiver of the audited financial reporting requirements under the Section 8 Program for FYE June 30, 2007. The County of Kent FYE is December 31, 2007, and the HA's FYE is June 30, 2007, which results in a timing difference between the audit due dates. The HA is in the process of changing the FYE to correspond with the FYE of the primary government. The HA was granted a waiver because the circumstances that prevented the HA from submitting the audited financial data were beyond the HA's control.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801.

Project/Activity: Michigan State Housing Development Authority, (MI901), Lansing, MI.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 24, 2008.

Reason Waived: The HA, a Section 8 only entity, requested a waiver of audited financial submission for FYE June 30, 2007. The HA implemented a new integrated software program to better manage resources. However, the implementation of the new software fell behind schedule resulting in late critical

information to their accounting firm. The waiver granted the HA additional time to submit audited financial data.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 902.60(d) and 24 CFR 902.60(e).

Project/Activity: Housing Authority of Knox County Housing Authority (IL085).

Nature of Requirement: The referenced regulations establish requirements for annual certification of management operations and resident satisfaction surveys.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: January 15, 2008.

Reason Waived: The Housing Authority of Knox County requested a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. This request is in accordance with 24 CFR 5.110. The HA was waived from the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), from the resident satisfaction survey, for the fiscal year ending September 30, 2007. The Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System from the previous reporting period were carried over.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410–5000, telephone (202) 475–8632.

• *Regulation:* 24 CFR 902.60(d) and 24 CFR 902.60(e).

Project/Activity: Portage Metropolitan Housing Authority (OH031), Ravenna, OH.

Nature of Requirement: The referenced regulations establish requirements for annual certification of management operations and resident satisfaction surveys.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 5, 2008.

Reason Waived: The Portage Metropolitan Housing Authority requested a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. This request is in accordance with 24 CFR 5.110. The HA was waived from the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), from the resident satisfaction survey, for the fiscal year ending December 31, 2007. The Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System from the previous reporting period were carried over.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410–5000, telephone (202) 475–8632.

• *Regulation:* 24 CFR 941.606(n)(1)(ii)(B).

Project/Activity: St. Louis Housing Authority (SLHA), St. Louis, MO Cochran Gardens II of the Cochran Gardens HOPE VI (Housing Opportunity for People Everywhere) program.

Nature of Requirement: The regulation states ''that if the partner and/or owner entity (or any other entity with an identity of interest with such parties) wants to serve as the general contractor for the project or development, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest bid submitted in response to a public request for bids.''

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 21, 2008.

Reason Waived: HUD waives this regulation on the condition that an independent, third party construction cost estimate is submitted that demonstrates that the proposed cost for the development is reasonable and at or below the independent estimate. The contract costs were below the independent estimate provided by SLHA. In addition, the general contractor committed to bid out all construction work at the trade levels.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, 451 Seventh Street, SW., Washington, DC 20140–5000, Room 4130, telephone (202) 402–4181.

• *Regulation:* 24 CFR 941.606(n)(1)(ii)(B.)

Project/Activity: DeKalb County Housing Authority (DCHA), DeKalb County, GA, Ashford Landing Phase II.

Nature of Requirement: The regulation states ''that if the partner and/or owner entity (or any other entity with an identity of interest with such parties) wants to serve as the general contractor for the project or development, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest bid submitted in response to a public request for bids.''

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 18, 2008.

Reason Waived: HUD waives this regulation on the condition that an independent, third party construction cost estimate is submitted that demonstrates that the proposed cost for the development is reasonable and at or below the independent estimate. The contract costs were below the independent estimate provided by DCHA. In addition, the general contractor committed to bid out all construction work at the trade levels.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20140–5000, Room 4130, telephone (202) 402–4181.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the City of Los Angeles (HACLA), Los Angeles, CA. The HACLA requested a waiver regarding exception payment standards so that it could provide a reasonable accommodation to a person with disabilities.

Nature of Requirement: Section 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted by: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date: January 4, 2008.

Reason Waived: The participant, who is an elderly person with disabilities and unable to move to another unit without difficulty, was paying in excess of 75 percent of her adjusted income toward her share of the rent as a result of a large rent increase. To provide a reasonable accommodation so that this participant would pay no more than 40 percent of adjusted income toward the family share, the HACLA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of Snohomish County (HASC) Snohomish County, WA.

Nature of Requirement: Section 982.505(d) of HUD's regulations states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary.

Date Granted: January 29, 2008.

Reason Waived: HASC requested a waiver regarding exception payment standard to provide reasonable accommodation to a person with disabilities. The applicant, a person with disabilities, owns a manufactured home that meets her physical needs and is accessible to her physician. To provide a reasonable accommodation so that this applicant paid no more than 40 percent of adjusted income toward the family share, the HASC was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the City of Los Angeles (HACLA), Los Angeles, CA.

Nature of Requirement: Section 982.505(d) of HUD's regulations states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 7, 2008.

Reason Waived: HACLA requested a waiver regarding exception payment standards so to provide reasonable accommodations to persons with disabilities. The participants, who are elderly with multiple disabilities and unable to move to another unit without difficulty, were paying in excess of 54 percent of their adjusted income toward their share of the rent as a result of a rent increase. To provide a reasonable accommodation so that the household paid no more than 40 percent of their adjusted income toward the family share, the HACLA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Lafayette Housing Authority (LHA), Lafayette, Indiana. The LHA requested a waiver regarding exception payment standards so that it could provide a reasonable accommodation to a person with disabilities.

Nature of Requirement: Section 982.505(d) of HUD's regulations states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 4, 2008.

Reason Waived: The participant is an elderly person with disabilities who owns a manufactured home. The health care provider recommended that this person remain in her unit due to severe emphysema and related health issues. To provide a reasonable accommodation so that this participant would pay no more than 40 percent of adjusted income toward the family share, the LHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the City of Los Angeles (HACLA), Los Angeles, CA. The HACLA requested a waiver regarding exception payment standards so that it could provide a reasonable accommodation to a person with disabilities.

Nature of Requirement: Section 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 28, 2008.

Reason Waived: The participant, who is an elderly person with disabilities and unable to move to another unit without difficulty, was paying in excess of 84 percent of her adjusted income toward her share of the rent as a result of a large rent increase. To provide a reasonable accommodation so that this participant would pay no more than 40 percent of adjusted income toward the family share, the HACLA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(b)(1).

Project/Activity: Mississippi Regional Housing Authority VI (MRHA VI), Jackson, MS.

Nature of Requirement: Section 983.51(b)(1) of HUD's regulations requires a public housing agency (PHA) to select project-based voucher (PBV) proposals in accordance with selection procedures under an administrative plan. The regulations prohibit the limiting of proposals to a single site and the imposition of restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 19, 2008.

Reason Waived: MRHA VI requested a waiver of competitive selection under the PBV program so that it could attach PBVs to PHA-owned units. The units will be developed with available money

under an approved 2007 Notice of Intent and Fungibility Plan dated December 21, 2006. The waiver was granted because attaching PBV to these units ensured the maintenance of long-term affordable housing in the relief and recovery efforts in the wake of Hurricane Katrina.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

- *Regulation:* 24 CFR 983.55(b).

Project/Activity: Massachusetts Department of Housing and Community Development (MDHCD), MA.

Nature of Requirement: Section 983.55(b) of HUD's regulations states that the public housing agency (PHA) may not enter into a Housing Assistance Payments (HAP) contract until HUD, or an independent entity approved by HUD, has conducted any required subsidy layering review and determined that the project-based voucher (PBV) assistance is in accordance with HUD subsidy layering requirements.

Granted by: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: January 4, 2008.

Reason Waived: MDHCD requested a waiver of a PBV regulation in order to execute an agreement to enter into a HAP contract prior to the completion of a subsidy layering review in order to meet a closing and construction start date for a project. The waiver was granted for a pilot program that had several funding sources. Access to certain funds had a pending closing date that required action prior to completion of the subsidy layering review. Both the owner and the PHA agreed to reduce contract rents, if necessary, subsequent to completion of the review.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

- *Regulation:* 24 CFR 985.101(a).

Project/Activity: Mississippi Regional Housing Authority VIII (MRHA VIII), MS

Nature of Requirement: Section 985.101(a) of HUD's regulations requires a public housing agency to submit the HUD-required Section 8 Management Assessment Program (SEMAP) certification form within 60 calendar days after the end of its fiscal year.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Dated Granted: March 7, 2008.

Reason Waived: The MRHA VIIII requested a waiver of SEMAP certification requirements for its fiscal year ending December 31, 2007. The waiver was granted because of the slow recovery rate of the rental housing market after Hurricane Katrina. Eighty percent of the rental market was still off line due, in part, to lack of disbursement of Mississippi's Community Development Block Grant funds for this recovery purpose.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

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Wednesday,
July 2, 2008

Part IV

Securities and Exchange Commission

17 CFR Parts 210, 228, 229 and 249
Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229 and 249

[Release Nos. 33–8934; 34–58028; File No. S7–06–03]

RIN 3235–AJ64

Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: We are adopting amendments to temporary rules that were published on December 21, 2006, in Release No. 33–8760 [71 FR 76580]. Those temporary rules require companies that are non-accelerated filers to include in their annual reports, pursuant to rules implementing section 404(b) of the Sarbanes-Oxley Act of 2002, an attestation report of their independent auditors on internal control over financial reporting for fiscal years ending on or after December 15, 2008. Under the amendments, a non-accelerated filer will be required to file the auditor's attestation report on internal control over financial reporting when it files an annual report for a fiscal year ending on or after December 15, 2009.

DATES: *Effective Dates:* The amendments are effective September 2, 2008, except Form 10–QSB will be effective from September 2, 2008 to October 31, 2008; § 228.308T and Form 10–KSB will be effective from September 2, 2008 to March 15, 2009; and §§ 210.2–02T and 229.308T, Form 20–F, Form 40–F, Form 10–Q, and Form 10–K will be effective from September 2, 2008 to June 30, 2010.

FOR FURTHER INFORMATION CONTACT: Sean Harrison, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to the following forms and temporary rules: Rule 2–02T of Regulation S–X,[1] Item 308T of Regulations S–K[2] and S–B,[3] Item 4T of Form 10–Q,[4] Item 3A(T) of Form 10–QSB,[5] Item 9A(T) of Form 10–K,[6] Item 8A(T) of Form 10–KSB,[7] Item 15T of Form 20–F,[8] and Instruction 3T of General Instruction B.(6) of Form 40–F.[9]

I. Background

In February 2008,[10] we proposed an extension of the section 404(b) auditor attestation requirement for non-accelerated filers.[11] This proposal followed an action we took in December 2006[12] to extend the dates by which non-accelerated filers must begin to comply with the internal control over financial reporting (''ICFR'') requirements mandated by Section 404 of the Sarbanes-Oxley Act of 2002.[13] Specifically, we postponed for five months, from fiscal years ending on or after July 15, 2007, to fiscal years ending on or after December 15, 2007, the date by which non-accelerated filers must begin to comply with the management report requirement in Item 308(a) of Regulation S–K.[14] We also postponed to fiscal years ending on or after December 15, 2008, the date by which non-accelerated filers must begin to comply with the auditor attestation report requirement in Item 308(b) of Regulation S–K.[15] We indicated that we would consider further postponing the auditor attestation report compliance date after considering the anticipated revisions to the Public Company Accounting Oversight Board's (''PCAOB'') Auditing Standard No. 2 (''AS No. 2'').

In the 2006 Release, we cited two primary reasons for deferring implementation of the auditor attestation report requirement for an additional year after implementation of the management report requirement. First, we stated that the deferred implementation would afford non-accelerated filers and their auditors the benefit of anticipated changes by the PCAOB to AS No. 2, subject to Commission approval, as well as any implementation guidance that the PCAOB issued for auditors of smaller public companies.

Second, we expected a deferred implementation of the auditor attestation requirement to save non-accelerated filers the full potential costs associated with the auditor's initial attestation to, and report on, management's assessment of ICFR during the period that changes to AS No. 2 were being considered and implemented, and the PCAOB was formulating guidance specifically for auditors of smaller public companies. Public commenters previously have asserted that the ICFR compliance costs are likely to be disproportionately higher for smaller public companies than larger ones, and that the auditor's fee represents a large percentage of those costs.[16]

On June 20, 2007, we approved the issuance of interpretive guidance regarding management's report on ICFR[17] and adopted rule amendments[18] to help public companies strengthen their ICFR evaluations while reducing unnecessary costs. The interpretive release provided guidance for management on how to conduct an evaluation of the effectiveness of a company's ICFR. The guidance sets forth an approach by which management can conduct a top-down, risk-based evaluation of ICFR.

In addition, on July 25, 2007, we approved the PCAOB's Auditing Standard No. 5 (''AS No. 5''), which replaced AS No. 2. The new standard sets forth the professional standards and related performance guidance for independent auditors to attest to, and report on, management's assessment of the effectiveness of ICFR. Our management guidance, in combination with AS No. 5, is intended to make evaluations of ICFR and ICFR audits more effective and efficient by being risk-based and scalable to a company's size and complexity.

On February 1, 2008, we proposed a one-year extension of the Section 404(b)

[1] 17 CFR 210–2.02T.

[2] 17 CFR 229.308T.

[3] 17 CFR 228.310T.

[4] 17 CFR 249.308a.

[5] 17 CFR 249.308b.

[6] 17 CFR 249.310.

[7] 17 CFR 249.310b.

[8] 17 CFR 249.220f.

[9] 17 CFR 249.240f.

[10] See Release No. 33–8889 (February 1, 2008) [73 FR 7450].

[11] Although the term ''non-accelerated filer'' is not defined in our rules, we use it throughout this release to refer to an Exchange Act reporting company that does not meet the Rule 12b–2 definition of either an ''accelerated filer'' or a ''large accelerated filer.''

[12] See Release No. 33–8760 (December 15, 2006) [71 FR 76580] (the ''2006 Release'').

[13] 15 U.S.C. 7262.

[14] 17 CFR 229.308(a). We effected the postponement, in part, by adding temporary Item 308T to Regulation S–K. We similarly added temporary Item 308T to Regulation S–B, but the Commission recently adopted amendments that will eliminate Regulation S–B effective March 15, 2009. See Release No. 33–8876 (December 19, 2007) [73 FR 934].

[15] 17 CFR 229.308(b).

[16] See, for example, letters of American Electronics Association, International Association of Small Broker-Dealers and Advisers, Small Business Entrepreneurship Council, and the Silicon Valley Leadership Group, Committee on Capital Markets Regulation on Release No. 33–8762 (December 20, 2006) [71 FR 77635], File No. S7–24–06.

[17] Release No. 33–8810 (Jun. 20, 2007) [72 FR 35324].

[18] Release No. 33–8809 (Jun. 20, 2007) [72 FR 35310]. The rule amendments, among other things, provided that an evaluation that complies with our interpretive guidance is one way to satisfy the annual ICFR evaluation requirement in Exchange Act Rules 13a–15(c) and 15d–15(c) [17 CFR 240.13a–15(c) and 240.15d–15(c)].

auditor attestation requirement for non-accelerated filers in view of the fact that there were still some additional actions that the Commission and PCAOB intended to take with respect to implementation of the section 404 requirements, and of concerns expressed by some about the orderly and efficient implementation of the ICFR requirements.[19]

One of these actions is the PCAOB's issuance of final staff guidance on auditing ICFR of smaller public companies. On October 17, 2007, the PCAOB published preliminary staff guidance that demonstrates how auditors can apply the principles described in AS No. 5 and provides examples of approaches to particular issues that might arise in the audits of smaller, less complex public companies.[20] Topics discussed in the PCAOB's guidance include: entity-level controls, risk of management override, segregation of duties and alternative controls, information technology controls, financial reporting competencies, and testing controls with less formal documentation. The comment period on the PCAOB's guidance ended on December 17, 2007, and the PCAOB is working on the final guidance.

Another action involves a study that we are undertaking to help determine whether our new management guidance on evaluating ICFR and AS No. 5 are having the intended effect of facilitating more cost-effective ICFR evaluations and audits for smaller reporting companies. Our study plan includes gathering new data from a broad array of companies about the costs and benefits of compliance with the ICFR requirements. The study will pay special attention to those smaller companies that are complying with the ICFR requirements for the first time.

One part of the study will consist of a web-based survey of all companies to which the section 404 requirements apply. Participation in this survey will be voluntary. Another part of the study will involve the Commission staff conducting in-depth interviews of a small number of interested parties. We are targeting the fall of 2008 for the initial release of findings.

We have received letters from a total of 67 commenters on the proposal to further extend the section 404(b) auditor attestation requirement for non-accelerated filers.[21] Approximately half of the commenters supported the proposed one-year extension,[22] and half opposed a further delay in compliance with the section 404(b) requirements by non-accelerated filers.[23] Many of the commenters that supported the proposed extension agreed that the one-year deferral was appropriate in light of our upcoming study. Absent the extension that we are granting in this release, many non-accelerated filers would have begun to incur independent auditor costs for fiscal years ending on or after December 15, 2008, before we had the opportunity to observe whether further action to improve the effectiveness and efficiency of section 404 implementation is warranted. In addition, several commenters that supported the proposed extension also believed the extension was necessary to provide additional time for companies and their auditors to consider the PCAOB's guidance on the ICFR audits of smaller public companies.[24] Another commenter,[25] while neither supporting nor opposing the proposed extension, suggested that the Commission should limit the extension to companies that qualify as a ''smaller reporting company'' under Exchange Act Rule 12b–2.[26]

Many of the commenters opposed to the proposed extension thought that non-accelerated filers have had adequate time to prepare for full compliance with the Section 404 requirements.[27] Several commenters opposed to the proposed extension also claimed that it was unnecessary for the Commission to undertake a study because several studies on the topic already have been completed, including some studies that reported evidence from surveys.[28]

We believe that an additional one-year deferral of the auditor attestation requirement is appropriate so that non-accelerated filers do not incur unnecessary compliance costs. An additional one-year deferral will allow these companies additional time to consider the PCAOB's guidance on ICFR audits of smaller public companies when it is finalized, as well as additional time for the auditors of non-accelerated filers to incorporate such guidance in their planning and conduct of their ICFR audits for 2009. The planned study is designed to elicit information on the recent compliance experiences of companies that is not available in the various earlier studies, including those that use evidence from surveys.[29]

II. Extension of Auditor Attestation Compliance Date for Non-Accelerated Filers

After consideration of the public comments that were received, we are adopting the one-year extension of the auditor attestation report requirement

[19] See, for example, the May 8, 2007, letter to Chairman Christopher Cox and Chairman Mark Olson from Senator John Kerry, Chairman, Senate Committee on Small Business and Entrepreneurship, and Senator Olympia Snowe, Ranking Member, Senate Committee on Small Business and Entrepreneurship, available at *http://sbc.senate.gov/lettersout/070508-SEC-PCAOB-HearingFollowUp.pdf;* hearing on ''Sarbanes-Oxley Section 404: New Evidence on the Costs for Small Businesses,'' House Committee on Small Business (December 12, 2007); and the July 12, 2007, letter from Sharon Haeger, America's Community Bankers, on Release No. 34–55876 [72 FR 32340], File No. PCAOB 2007–02, available at *http://www.sec.gov/comments/pcaob-2007-02/pcaob200702.shtml.*

[20] See ''An Audit of Internal Control that is Integrated with an Audit of the Financial Statements: Guidance for Auditors of Smaller Companies,'' (October 17, 2007), available at *http://www.pcaobus.org.*

[21] The public comments we received are available for inspection in the Commission's Public Reference Room at 100 F Street, NE., Washington DC 20549 in File No. S7–06–03. They are also available on-line at *http://www.sec.gov/rules/proposed/s70603.shtml.* Of the 67 commenters, 49 were graduate and undergraduate students at the University of Wisconsin-La Crosse. More than half of the students opposed the proposed extension.

[22] See, for example, letters from the U.S. Chamber of Commerce, First National Bank of Groton (NY), Mark Hart, Independent Community Bankers of America (''ICBA''), International Association of Small Broker Dealers and Advisors (''IASBD''), Kyle Kaja, George Merkl, New York State Society of Certified Public Accountants (''NYSSCPA''), Melissa Palmer, Maria Romundstad, the Office of Advocacy of the Small Business Administration (''SBA''), Small Business and Entrepreneurship Council (''SBEC''), David Tews and Jordan Walt.

[23] See, for example, letters from Kevin Burgess, California Public Employees' Retirement System (''CalPERS''), Council of Institutional Investors (''CII''), Daniel DeGier, Christopher Fearn, Jared Galassini and Anna Wildenberg.

[24] See, for example, letters from the U.S. Chamber of Commerce, ICBA and Nicole Nederloe.

[25] See letter from Ernst & Young LLP(''E&Y'').

[26] See 17 CFR 240.12b–2. Although there is considerable overlap between companies that meet the definition of a ''smaller reporting company'' in Exchange Act Rule 12b–2 and companies that are non-accelerated filers because they fall outside the definitions of ''accelerated filer'' and ''large accelerated filer,'' the terms ''smaller reporting company'' and ''non-accelerated filer'' are not synonymous. For example, a company that has publicly issued a class of debt securities, but does not have a class of equity securities outstanding would be a non-accelerated filer even though it may not meet the definition of a ''smaller reporting company.'' Many companies that are debt-only issuers, however, are subsidiaries of larger public companies that meet the definition of accelerated filer or large accelerated filer. Therefore, we do not believe it necessary for purposes of this extension to make a distinction between non-accelerated filers and smaller reporting companies.

[27] See, for example, the letters from CII, Jared Galassini, Joshua Pike, and Jennifer Welsh.

[28] See, for example, the letters from CII and Michael Tolvstad.

[29] A key objective of the planned survey is to enable the Commission staff to evaluate any response bias that might cause the responses to over-represent the experiences of a particular sub-sample of companies, as opposed to the companies that are affected by the Section 404 requirements more generally.

substantially as proposed. We are amending Item 308T of Regulations S–K and S–B, Rule 2–02T of Regulation S–X, and Forms 10–Q, 10–K, 20–F and 40–F to require non-accelerated filers to provide their auditor's attestation in their annual reports filed for fiscal years ending on or after December 15, 2009. A non-accelerated filer will continue to be required to state in its management report on ICFR that the company's annual report does not include an auditor attestation report.[30]

In the Proposing Release, we also requested comment on whether management's report on ICFR should be ''filed'' rather than ''furnished'' and not be subject to liability under Section 18 of the Exchange Act[31] during the second year of a non-accelerated filer's compliance with the ICFR requirements under section 404(a) if we adopted the proposed extension. Two commenters argued that we should discontinue treating the management report on ICFR as ''furnished'' rather than ''filed'' because the protection was not needed for the second year of the section 404(b) extension[32] Three commenters believed that we should continue to allow the management report on ICFR of non-accelerated filers to be ''furnished'' rather than ''filed'' because non-accelerated filers should not be subject to liability under Section 18 until such time that they have had their ICFR attested to by their auditor.[33]

We recognize that a non-accelerated filer that files only a management report on ICFR may become subject to more second-guessing as a result of separating the management and auditor reports. Management may conclude that the company's ICFR is effective when the management report is filed without the auditor's attestation report, but the company's auditor may come to a contrary conclusion in its report filed in a subsequent year, and as a result, the company's previous assessment may be called into question. To reduce the liability risk associated with such second-guessing, we believe that until such time as non-accelerated filers are required to comply with both the section 404(a) and 404(b) requirements, it is reasonable to continue the temporary liability distinction and treat the management report as ''furnished'' rather than ''filed.'' Therefore, we also have decided to extend the amendments that cause a non-accelerated filer's management report on ICFR to be ''furnished'' rather than ''filed.'' Of course, material misstatements or omissions in management's report on ICFR, regardless of whether the report is ''furnished'' or ''filed,'' are subject to liability under section 10(b) and Rule 10b-5 under the Exchange Act.[34]

The revised compliance dates for the Section 404 internal control requirements are presented in the table below:

Filer status	Compliance dates for the internal control over financial reporting requirements	
	Management report on ICFR	Auditor attestation on management's report on ICFR
U.S. Issuer:		
Non-accelerated filer (public float under $75 million).	Annual reports for fiscal years ending on or after December 15, 2007.	Annual reports for fiscal years ending on or after December 15, 2009.
Large accelerated filer and accelerated filer (public float above $75 million).	Annual reports for fiscal years ending on or after November 15, 2004.	Annual reports for fiscal years ending on or after November 15, 2004.
Foreign private issuer:		
Non-accelerated filer (public float under $75 million).	Annual reports for fiscal years ending on or after December 15, 2007.	Annual reports for fiscal years ending on or after December 15, 2009.
Accelerated filer (public float above $75 million and below $700 million).	Annual reports for fiscal years ending on or after July 15, 2006.	Annual reports for fiscal years ending on or after July 15, 2007.
Large accelerated filer (public float above $700 million).	Annual reports for fiscal years ending on or after July 15, 2006.	Annual reports for fiscal years ending on or after July 15, 2006.
U.S. or foreign private issuer:		
Newly public company	Second annual report	Second annual report.

III. Paperwork Reduction Act

In connection with our original proposal and adoption of the rules and amendments implementing the section 404 requirements,[35] we submitted cost and burden estimates of the collection of information requirements of the amendments to the Office of Management and Budget (''OMB''). We published a notice requesting comment on the collection of information requirements in the proposing release for the rule amendments. We submitted these requirements to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (''PRA'')[36] and received approval of these estimates. We do not believe that the amendments will result in any change in the collection of information requirements of the amendments implementing section 404 and we received no comments suggesting the amendments would result in any change. Therefore, we are not revising our PRA burden and cost estimates submitted to the OMB.

IV. Cost-Benefit Analysis

A. Benefits

The amendments will postpone for one year the date by which a non-accelerated filer must begin to include in its annual report an auditor attestation report on management's assessment of internal control over financial reporting. As a result, non-accelerated filers will be required to complete only management's assessment in the first and second year

[30] See Items 308T(a)(4) of Regulations S–K and S–B.

[31] Section 18 of the Exchange Act [15 U.S.C. 78r] imposes liability on any person who makes or causes to be made in any application or report or document filed under the Act, or any rule thereunder, any statement that ''was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact.'' As a result of the temporary Item 308T of Regulation S–K and S–B and the temporary amendments to Forms 20–F and 40–F, however, during the applicable periods, management's report would be subject to liability under this section only in the event that a non-accelerated filer specifically states that the report is to be considered ''filed'' under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act.

[32] See letters from CalPERS and E&Y.

[33] See letters from the U.S. Chamber of Commerce, CommBancorp, Inc. and George Merkl.

[34] See 15 U.S.C. 78j(b) and 17 CFR 240.10b–5.

[35] See Release No. 33–8138 (October 22, 2002) [67 FR 66208] and Release No. 33–8238 (June 5, 2003) [68 FR 36636].

[36] 44 U.S.C. 3501 *et seq.* and 5 CFR 1320.11.

of their compliance with the section 404 requirements.

We are undertaking a study to help assess whether the new management guidance and AS No. 5 are having the intended effect of facilitating more effective and efficient ICFR evaluations and audits for smaller reporting companies. Our interpretive guidance for management and AS No. 5 were designed to make management evaluations and ICFR audits more effective and efficient. We believe that an additional one-year deferral of the auditor attestation report requirement will benefit investors in non-accelerated filers by helping those smaller companies avoid incurring unnecessary compliance costs as we determine whether further action to improve the effectiveness and efficiency of section 404 implementation is warranted. In addition, we believe that investors in non-accelerated filers may experience benefits from the following economic effects of the extension:

- Auditors of non-accelerated filers will have significantly more time to conform their ICFR audit approach to meet the requirements of AS No. 5, and to consider the PCAOB's guidance for auditors of smaller public companies; [37] and
- Non-accelerated filers will have additional time to focus on their approach for evaluating and reporting on the effectiveness of ICFR. This may facilitate their efforts to develop best practices and efficiencies in preparing the management report prior to becoming subject to the auditor attestation report requirement.

B. Costs

Under the amendments, investors in non-accelerated filers will have to wait longer than they would in the absence of the deferral for the assurances provided by the attestation report by the companies' auditor on management's report on ICFR. For example, several commenters expressed concern that the amendments may reduce investor confidence in non-accelerated filers.[38] However, we believe that the risk that some investors may lose confidence in non-accelerated filers is small because the management reports on ICFR of these companies, while not subject to liability under section 18 of the Exchange, will continue to be subject to other liability provisions of the Exchange Act.

The amendments may also increase the risk that, without the auditor's attestation, some non-accelerated filers may erroneously conclude that the company's ICFR is effective, when an ICFR audit might reveal that it is not effective. Two commenters argued the amendments could increase the risk that a weakness in a company's ICFR would not be detected or might be concealed from investors.[39] In addition, some companies may conduct an assessment that is not as thorough, careful and as appropriate to the company's circumstances as they would perform if the auditor were also conducting an audit of ICFR.

No commenter provided cost estimates for the proposed extension. Several commenters, however, referred to costs estimates prepared by a number of sources regarding the costs of section 404 compliance generally.[40] As mentioned above, we are undertaking our own study in part because these prior cost estimates do not reflect the recent efforts to make section 404 compliance more efficient.

V. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act [41] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, section 2(b) [42] of the Securities Act and section 3(f) [43] of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation.

We believe that the additional one-year delay of the auditor attestation report requirement will promote efficiency and capital formation by helping reduce inefficiencies and transition costs for non-accelerated filers. Several commenters stated that the proposed extension would help smaller companies reduce the overall costs associated with the ICFR requirements.[44] In addition, the delay will provide us with the opportunity to evaluate whether the new management guidance and AS No. 5 are having the intended effect of facilitating more effective and efficient ICFR evaluations and audits and to observe whether further action is needed to improve the effectiveness and efficiency of section 404 before non-accelerated filers begin to incur costs. We expect the additional one-year deferral of the auditor attestation requirement to increase efficiency by providing more time for non-accelerated filers to prepare for compliance with the section 404 requirements and by affording these companies and their auditors time to consider the PCAOB's small company ICFR audit guidance. Increased efficiency may promote capital formation and thereby benefit investors. However, we acknowledge that the deferral of the auditor attestation requirement may cause some investors to lose confidence in non-accelerated filers, which could make it more difficult for these companies to raise capital in the public markets.

It is possible that a competitive impact could result from the differing treatment of non-accelerated filers and larger companies that already have been complying with the section 404 requirements, but we did not receive any comments suggesting that this type of impact has occurred as a result of the prior extension or otherwise specifically addressing the effect of the extension on competition.

VI. Final Regulatory Flexibility Analysis

We have prepared this Final Regulatory Flexibility Analysis (''FRFA'') in accordance with section 603 of the Regulatory Flexibility Act.[45] This FRFA relates to amendments to the following temporary provisions: Item 308T of Regulations S–K and S–B, Rule 2–02T of Regulation S–X, Item 4T of Form 10–Q, Item 3A(T) of Form 10–QSB, Item 9A(T) of Form 10–K, Item 8A(T) of Form 10–KSB, Item 15T of Form 20–F, and Instruction 3T of General Instruction B.(6) of Form 40–F. Prior to these amendments, a non-accelerated filer was scheduled to start providing its auditor's attestation report on ICFR in its annual report for a fiscal year ending on or after December 15, 2008. We are amending these forms and temporary rules to require a non-accelerated filer to start providing the auditor attestation report on ICFR in its

[37] Several commenters also noted this benefit. See, for example, letters from the Chamber of Commerce and ICBA.

[38] See letters from CalPERS, Hang Bui, John DeGoey, Jared Galassini, Stacy Lulloff, Anthony Morgan, Joshua Pike, Brandon Wagner and Jennifer Welsh.

[39] See letters from E&Y and Michael Tolvstad.

[40] See, for example, letters from CII and the SBA.

[41] 15 U.S.C. 78w(a).

[42] 15 U.S.C. 77b(b).

[43] 15 U.S.C. 78c(f).

[44] See, for example, letters from U.S. Chamber of Commerce and ICBA.

[45] 5 U.S.C. 603.

annual reports for fiscal years ending on or after December 15, 2009.

A. Reasons for, and Objectives of, the Amendments

The Commission is undertaking a study to assess whether the new management guidance and AS No. 5 are having the intended effect of facilitating more effective and efficient ICFR evaluations and audits for smaller reporting companies. We are amending our forms and temporary rules to defer implementation of the auditor attestation report requirement for non-accelerated filers for an additional year for the following primary reasons:

- To enable non-accelerated filers more time to gain efficiencies in management's evaluation of the effectiveness of internal control over financial reporting;
- To provide the Commission with time to review the findings of its study and to consider whether further action to improve the effectiveness and efficiency of Section 404 implementation is warranted;
- To provide the PCAOB time to promulgate its guidance for ICFR audits of smaller public companies in final form; and
- To provide the auditors of non-accelerated filers additional time to consider such guidance.

The amendments aim to further the goals of the Sarbanes-Oxley Act to enhance the quality of public company disclosure concerning the company's internal control over financial reporting and increase investor confidence in the financial markets.

B. Significant Issues Raised by Public Comment

In the Proposing Release, we requested comment on the number of small entity issuers that may be affected, the existence or nature of the potential impact and how to quantify the impact of the amendments. As mentioned above, several commenters believed that the extension would help smaller companies reduce the overall costs associated with the ICFR requirements,[46] but other commenters argued that a further delay may affect investor confidence in the ICFR of smaller companies.[47] We did receive data from the Office of Advocacy of the Small Business Administration on the general costs of compliance related to implementation of the section 404 requirements.[48] However, this data did not address the costs of delayed implementation, and we are conducting our own study to assess the costs that reflect our recent efforts to make section 404 compliance more efficient.[49]

C. Small Entities Subject to the Amendments

The amendments will affect some issuers that are small entities. Exchange Act Rule 0–10(a) [50] defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 1,100 issuers, other than registered investment companies, that may be considered small entities. The amendments will apply to any small entity that is subject to reporting under either section 13(a) or 15(d) of the Exchange Act. One commenter recommended that we use the definition of ''smaller reporting company'' [51] in Securities Act Rule 405 [52] and Exchange Act Rule 12b–2 [53] to define ''small entity'' for purposes of the FRFA.[54] Although, we are not proposing any amendments to the definition of small entity in Exchange Act Rule 0–10(a) at this time, we will consider in the future whether any revisions to this definition are warranted.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The amendments will alleviate reporting and compliance burdens by postponing by an additional year the date by which non-accelerated filers must begin to comply with the auditor attestation report on ICFR in their annual reports.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

In connection with the amendments, we considered several of these alternatives. One commenter recommended that we should consider a two-year extension for larger non-accelerated filers and a three-year extension for non-accelerated filers that had market capitalizations of $25 million or less.[55] The amendments establish a different compliance and reporting timetable for non-accelerated filers and small entities from that of other companies.

As discussed above, the amendments are designed to allow non-accelerated filers to avoid incurring unnecessary compliance costs before we have the benefit of analyzing the results of our section 404 study, and to provide non-accelerated filers and their auditors with time to consider, and integrate the concepts in the forthcoming PCAOB smaller company ICFR audit guidance. We anticipate that one year should adequate.

We believe that the amendments will promote the primary goal of enhancing the quality of reporting and increasing investor confidence in the fairness and integrity of the securities markets. Exempting small entities entirely from

[46] See footnote 44 above.

[47] See footnote 38 above.

[48] See letter from SBA.

[49] The SBA also recommended that we use the results of our Section 404 study to update the Final Regulatory Flexibility Act analysis of the internal control reporting requirements included in the original 2003 release adopting the rules implementing section 404 (Release No. 33–8238 [68 FR 36636]). In evaluating the efficiency and effectiveness of the section 404 requirements, we will look to the results of our study, as well as other information. We will also consider the results of our study when we conduct a review under section 610 of the Regulatory Flexibility Act.

[50] 17 CFR 240.0–10(a).

[51] A ''small reporting company'' is defined as an issuer that is not an investment company, an asset-backed issuer (as defined in 17 CFR 229.1101), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that: (1) Had a public float of less than $75 million as of the last business day of its most recently completed second fiscal quarter, computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity; or (2) In the case of an initial registration statement under the Securities Act or Exchange Act for shares of its common equity, had a public float of less than $75 million as of a date within 30 days of the date of the filing of the registration statement, computed by multiplying the aggregate worldwide number of such shares held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of such shares included in the registration statement by the estimated public offering price of the shares; or (3) In the case of an issuer whose public float as calculated under (1) or (2) was zero, had annual revenues of less than $50 million during the most recently completed fiscal year for which audited financial statements are available.

[52] 17 CFR 230.405.

[53] 17 CFR 240.12b–2.

[54] See letter from SBA.

[55] See letter from IASBD.

the requirements of section 404(b) may be contrary to this goal.

An exemption from the amendments delaying compliance with the auditor attestation requirement, on the other hand, would be inconsistent with one of the goals of our study to determine whether further action to improve the effectiveness and efficiency of section 404 implementation is warranted before smaller companies have begun to incur independent auditor costs to perform integrated audits of their financial statements and ICFR.

VII. Statutory Authority and Text of the Amendments

The amendments described in this release are adopted under the authority set forth in section 19 of the Securities Act, Sections 3, 12, 13, 15, 23 and 36 of the Exchange Act, and sections 3(a) and 404 of the Sarbanes-Oxley Act.

List of Subjects

17 CFR Part 210

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229 and 249

Reporting and recordkeeping requirements, Securities.

Text of Amendments

■ For the reasons set out in the preamble, the Commission is amending title 17, chapter II, of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78*l*, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll*, 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202, 7218 and 7262, unless otherwise noted.

■ 2. Section 210.2–02T is amended by:
■ a. Removing paragraphs (a) and (b), and redesignating paragraphs (c) and (d) as paragraphs (a) and (b);
■ b. Revising the date ''December 15, 2008'' in newly redesignated paragraph (a) to read ''December 15, 2009''; and
■ c. Revising newly redesignated paragraph (b).

The revision reads as follows:

§ 210.2–02T Accountants' reports and attestation reports on internal control over financial reporting.

* * * * *

(b) This section expires on June 30, 2010.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 3. The authority citation for part 228 continues to read, in part, as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, and 7201 *et. seq.*, and 18 U.S.C. 1350.

* * * * *

■ 4. Section 228.308T is amended by revising the ''Note to Item 308T'' and paragraph (c) to read as follows:

§ 228.308T (Item 308T) Internal control over financial reporting.

Note to Item 308T: This is a special temporary section that applies only to a fiscal period ending on or after December 15, 2007 but before March 15, 2009.

* * * * *

(c) This temporary Item 308T, and accompanying note and instructions, will expire on March 15, 2009.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 5. The authority citation for part 229 continues to read, in part, as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et. seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 6. Section 229.308T is amended by revising the ''Note to Item 308T'' and paragraph (c) to read as follows:

§ 229.308T (Item 308T) Internal control over financial reporting.

Note to Item 308T: This is a special temporary section that applies only to a registrant that is neither a ''large accelerated filer'' nor an ''accelerated filer'' as those terms are defined in § 240.12b–2 of this chapter and only with respect to a fiscal period ending on or after December 15, 2007, but before December 15, 2009.

* * * * *

(c) This temporary Item 308T, and accompanying note and instructions, will expire on June 30, 2010.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 7. The general authority citation for Part 249 is revised to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 8. Form 20–F (referenced in § 249.220f), Part II, Item 15T is amended by:
■ a. Revising the date ''December 15, 2008'' in paragraph (2) to the ''Note to Item 15T'' to read ''December 15, 2009''; and
■ b. Revising the date ''June 30, 2009'' in paragraph (d) to read ''June 30, 2010''.

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

■ 9. Form 40–F (referenced in § 249.240f) is amended by:
■ a. Revising the date ''December 15, 2008'' in ''Instruction 3T(2)'' to the ''Instructions to paragraphs (b), (c), (d) and (e) of General Instruction B.(6)'' to read ''December 15, 2009''; and
■ b. Revising the date ''June 30, 2009'' in the paragraph following ''Instruction 3T'' to the ''Instructions to paragraphs (b), (c), (d) and (e) of General Instruction B.(6)'' to read ''June 30, 2010''.

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

■ 10. Form 10–Q (referenced in § 249.308a) is amended by revising Item 4T to Part I to read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

* * * * *

PART I—FINANCIAL INFORMATION

* * * * *

Item 4T. Controls and Procedures

(a) If the registrant is neither a large accelerated filer nor an accelerated filer as those terms are defined in § 240.12b–2 of this chapter, furnish the

information required by Items 307 and 308T(b) of Regulation S–K (17 CFR 229.307 and 229.308T(b)) with respect to a quarterly report that the registrant is required to file for a fiscal year ending on or after December 15, 2007, but before December 15, 2009.

(b) This temporary Item 4T will expire on June 30, 2010.

* * * * *

■ 11. Form 10–QSB (referenced in § 249.308b) is amended by revising Item 3A(T) to Part I to read as follows:

Note: The text of Form 10–QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–QSB

* * * * *

PART I—FINANCIAL INFORMATION

* * * * *

Item 3A(T). Controls and Procedures

(a) Furnish the information required by Items 307 and 308T(b) of Regulation S–B (17 CFR 228.307 and 228.308T(b)) with respect to a quarterly report that the small business issuer is required to file for a fiscal year ending on or after December 15, 2007, but before October 31, 2008.

(b) This temporary Item 3A(T) will expire on October 31, 2008.

* * * * *

■ 12. Form 10–K (referenced in § 249.310) is amended by:

■ a. Revising the date ''December 15, 2008'' in paragraph (a) to Item 9A(T) to Part II to read ''December 15, 2009''; and

■ b. Revising the date ''June 30, 2009'' in paragraph (b) to Item 9A(T) to Part II to read ''June 30, 2010''.

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

■ 13. Form 10–KSB (referenced in § 249.310b) is amended by revising the dates ''December 15, 2008'' in paragraph (a), and ''June 30, 2009'' in paragraph (b) to Item 8A(T) to Part II to read ''March 15, 2009''.

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

By the Commission.

Dated: June 26, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14942 Filed 7–1–08; 8:45 am]

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Federal Register

Wednesday,
July 2, 2008

Part V

The President

Executive Order 13467—Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information

Federal Register
Vol. 73, No. 128
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Presidential Documents

Title 3—

The President

Executive Order 13467 of June 30, 2008

Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure an efficient, practical, reciprocal, and aligned system for investigating and determining suitability for Government employment, contractor employee fitness, and eligibility for access to classified information, while taking appropriate account of title III of Public Law 108–458, it is hereby ordered as follows:

PART 1—POLICY, APPLICABILITY, AND DEFINITIONS

Section 1.1. *Policy.* Executive branch policies and procedures relating to suitability, contractor employee fitness, eligibility to hold a sensitive position, access to federally controlled facilities and information systems, and eligibility for access to classified information shall be aligned using consistent standards to the extent possible, provide for reciprocal recognition, and shall ensure cost-effective, timely,and efficient protection of the national interest, while providing fair treatment to those upon whom the Federal Government relies to conduct our Nation's business and protect national security.

Sec. 1.2. *Applicability.* (a) This order applies to all covered individuals as defined in section 1.3(g), except that:

(i) the provisions regarding eligibility for physical access to federally controlled facilities and logical access to federally controlled information systems do not apply to individuals exempted in accordance with guidance pursuant to the Federal Information Security Management Act (title III of Public Law 107–347) and Homeland Security Presidential Directive 12; and

(ii) the qualification standards for enlistment, appointment, and induction into the Armed Forces pursuant to title 10, United States Code, are unaffected by this order.

(b) This order also applies to investigations and determinations of eligibility for access to classified information for employees of agencies working in or for the legislative or judicial branches when those investigations or determinations are conducted by the executive branch.**Sec. 1.3.** *Definitions.* For the purpose of this order: (a) ''Adjudication'' means the evaluation of pertinent data in a background investigation, as well as any other available information that is relevant and reliable, to determine whether a covered individual is:

(i) suitable for Government employment;

(ii) eligible for logical and physical access;

(iii) eligible for access to classified information;

(iv) eligible to hold a sensitive position; or

(v) fit to perform work for or on behalf of the Government as a contractor employee.

(b) ''Agency'' means any ''Executive agency'' as defined in section 105 of title 5, United States Code, including the ''military departments,'' as defined in section 102 of title 5, United States Code, and any other entity

within the executive branch that comes into possession of classified information or has designated positions as sensitive, except such an entity headed by an officer who is not a covered individual.

(c) ''Classified information'' means information that has been determined pursuant to Executive Order 12958 of April 17, 1995, as amended, or a successor or predecessor order, or the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) to require protection against unauthorized disclosure.

(d) ''Continuous evaluation'' means reviewing the background of an individual who has been determined to be eligible for access to classified information (including additional or new checks of commercial databases, Government databases, and other information lawfully available to security officials) at any time during the period of eligibility to determine whether that individual continues to meet the requirements for eligibility for access to classified information.

(e) ''Contractor'' means an expert or consultant (not appointed under section 3109 of title 5, United States Code) to an agency; an industrial or commercial contractor, licensee, certificate holder, or grantee of any agency, including all subcontractors; a personal services contractor; or any other category of person who performs work for or on behalf of an agency (but not a Federal employee).

(f) ''Contractor employee fitness'' means fitness based on character and conduct for work for or on behalf of the Government as a contractor employee.

(g) ''Covered individual'' means a person who performs work for or on behalf of the executive branch, or who seeks to perform work for or on behalf of the executive branch, but does not include:

(i) the President or (except to the extent otherwise directed by the President) employees of the President under section 105 or 107 of title 3, United States Code; or

(ii) the Vice President or (except to the extent otherwise directed by the Vice President) employees of the Vice President under section 106 of title 3 or annual legislative branch appropriations acts.

(h) ''End-to-end automation'' means an executive branch-wide federated system that uses automation to manage and monitor cases and maintain relevant documentation of the application (but not an employment application), investigation, adjudication, and continuous evaluation processes.

(i) ''Federally controlled facilities'' and ''federally controlled information systems'' have the meanings prescribed in guidance pursuant to the Federal Information Security Management Act (title III of Public Law 107–347) and Homeland Security Presidential Directive 12.

(j) ''Logical and physical access'' means access other than occasional or intermittent access to federally controlled facilities or information systems.

(k) ''Sensitive position'' means any position so designated under Executive Order 10450 of April 27, 1953, as amended.

(l) ''Suitability'' has the meaning and coverage provided in 5 CFR Part 731.

PART 2—ALIGNMENT, RECIPROCITY, AND GOVERNANCE

Sec. 2.1. *Aligned System.* (a) Investigations and adjudications of covered individuals who require a determination of suitability, eligibility for logical and physical access, eligibility to hold a sensitive position, eligibility for access to classified information, and, as appropriate, contractor employee fitness, shall be aligned using consistent standards to the extent possible. Each successively higher level of investigation and adjudication shall build upon, but not duplicate, the ones below it.

(b) The aligned system shall employ updated and consistent standards and methods, enable innovations with enterprise information technology capabilities and end-to-end automation to the extent practicable, and ensure that relevant information maintained by agencies can be accessed and shared

rapidly across the executive branch, while protecting national security, protecting privacy-related information, ensuring resulting decisions are in the national interest, and providing the Federal Government with an effective workforce.

(c) Except as otherwise authorized by law, background investigations and adjudications shall be mutually and reciprocally accepted by all agencies. An agency may not establish additional investigative or adjudicative requirements (other than requirements for the conduct of a polygraph examination consistent with law, directive, or regulation) that exceed the requirements for suitability, contractor employee fitness, eligibility for logical or physical access, eligibility to hold a sensitive position, or eligibility for access to classified information without the approval of the Suitability Executive Agent or Security Executive Agent, as appropriate, and provided that approval to establish additional requirements shall be limited to circumstances where additional requirements are necessary to address significant needs unique to the agency involved or to protect national security.

Sec. 2.2. *Establishment and Functions of Performance Accountability Council.* (a) There is hereby established a Suitability and Security Clearance Performance Accountability Council (Council).

(b) The Deputy Director for Management, Office of Management and Budget, shall serve as Chair of the Council and shall have authority, direction, and control over the Council's functions. Membership on the Council shall include the Suitability Executive Agent and the Security Executive Agent. The Chair shall select a Vice Chair to act in the Chair's absence. The Chair shall have authority to designate officials from additional agencies who shall serve as members of the Council. Council membership shall be limited to Federal Government employees and shall include suitability and security professionals.

(c) The Council shall be accountable to the President to achieve, consistent with this order, the goals of reform, and is responsible for driving implementation of the reform effort, ensuring accountability by agencies, ensuring the Suitability Executive Agent and the Security Executive Agent align their respective processes, and sustaining reform momentum.

(d) The Council shall:

(i) ensure alignment of suitability, security, and, as appropriate, contractor employee fitness investigative and adjudicative processes;

(ii) hold agencies accountable for the implementation of suitability, security, and, as appropriate, contractor employee fitness processes and procedures;

(iii) establish requirements for enterprise information technology;

(iv) establish annual goals and progress metrics and prepare annual reports on results;

(v) ensure and oversee the development of tools and techniques for enhancing background investigations and the making of eligibility determinations;

(vi) arbitrate disparities in procedures between the Suitability Executive Agent and the Security Executive Agent;

(vii) ensure sharing of best practices; and

(viii) advise the Suitability Executive Agent and the Security Executive Agent on policies affecting the alignment of investigations and adjudications.

(e) The Chair may, to ensure the effective implementation of the policy set forth in section 1.1 of this order and to the extent consistent with law, assign, in whole or in part, to the head of any agency (solely or jointly) any function within the Council's responsibility relating to alignment and improvement of investigations and determinations of suitability, contractor employee fitness, eligibility for logical and physical access, eligibility for access to classified information, or eligibility to hold a sensitive position.

Sec. 2.3. *Establishment, Designation, and Functions of Executive Agents.* (a) There is hereby established a Suitability Executive Agent and a Security Executive Agent.

(b) The Director of the Office of Personnel Management shall serve as the Suitability Executive Agent. As the Suitability Executive Agent, the Director of the Office of Personnel Management will continue to be responsible for developing and implementing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of investigations and adjudications relating to determinations of suitability and eligibility for logical and physical access.

(c) The Director of National Intelligence shall serve as the Security Executive Agent. The Security Executive Agent:

(i) shall direct the oversight of investigations and determinations of eligibility for access to classified information or eligibility to hold a sensitive position made by any agency;

(ii) shall be responsible for developing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of investigations and adjudications relating to determinations of eligibility for access to classified information or eligibility to hold a sensitive position;

(iii) may issue guidelines and instructions to the heads of agencies to ensure appropriate uniformity, centralization, efficiency, effectiveness, and timeliness in processes relating to determinations by agencies of eligibility for access to classified information or eligibility to hold a sensitive position;

(iv) shall serve as the final authority to designate an agency or agencies to conduct investigations of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to classified information or eligibility to hold a sensitive position;

(v) shall serve as the final authority to designate an agency or agencies to determine eligibility for access to classified information in accordance with Executive Order 12968 of August 2, 1995;

(vi) shall ensure reciprocal recognition of eligibility for access to classified information among the agencies, including acting as the final authority to arbitrate and resolve disputes among the agencies involving the reciprocity of investigations and determinations of eligibility for access to classified information or eligibility to hold a sensitive position; and

(vii) may assign, in whole or in part, to the head of any agency (solely or jointly) any of the functions detailed in (i) through (vi), above, with the agency's exercise of such assigned functions to be subject to the Security Executive Agent's oversight and with such terms and conditions (including approval by the Security Executive Agent) as the Security Executive Agent determines appropriate.

(d) Nothing in this order shall be construed in a manner that would limit the authorities of the Director of the Office of Personnel Management or the Director of National Intelligence under law.

Sec. 2.4. *Additional Functions.* (a) The duties assigned to the Security Policy Board by Executive Order 12968 of August 2, 1995, to consider, coordinate, and recommend policy directives for executive branch security policies, procedures, and practices are reassigned to the Security Executive Agent.

(b) Heads of agencies shall:

(i) carry out any function assigned to the agency head by the Chair, and shall assist the Chair, the Council, the Suitability Executive Agent, and the Security Executive Agent in carrying out any function under sections 2.2 and 2.3 of this order;

(ii) implement any policy or procedure developed pursuant to this order;

(iii) to the extent permitted by law, make available to the Performance Accountability Council, the Suitability Executive Agent, or the Security

Executive Agent such information as may be requested to implement this order;

(iv) ensure that all actions taken under this order take account of the counterintelligence interests of the United States, as appropriate; and

(v) ensure that actions taken under this order are consistent with the President's constitutional authority to:

(A) conduct the foreign affairs of the United States;
(B) withhold information the disclosure of which could impair the foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties;
(C) recommend for congressional consideration such measures as the President may judge necessary or expedient; and
(D) supervise the unitary executive branch.

PART 3—MISCELLANEOUS

Sec. 3. *General Provisions.* (a) Executive Order 13381 of June 27, 2005, as amended, is revoked. Nothing in this order shall:

(i) supersede, impede, or otherwise affect:

(A) Executive Order 10450 of April 27, 1953, as amended;
(B) Executive Order 10577 of November 23, 1954, as amended;
(C) Executive Order 12333 of December 4, 1981, as amended;
(D) Executive Order 12829 of January 6, 1993, as amended; or
(E) Executive Order 12958 of April 17, 1995, as amended; nor

(ii) diminish or otherwise affect the denial and revocation procedures provided to individuals covered by Executive Order 10865 of February 20, 1960, as amended.

(b) Executive Order 12968 of August 2, 1995 is amended:

(i) by inserting: ''**Sec. 3.5.** *Continuous Evaluation.* An individual who has been determined to be eligible for or who currently has access to classified information shall be subject to continuous evaluation under standards (including, but not limited to, the frequency of such evaluation) as determined by the Director of National Intelligence.''; and

(ii) by striking ''the Security Policy Board shall make recommendations to the President through the Assistant to the President for National Security Affairs'' in section 6.3(a) and inserting in lieu thereof ''the Director of National Intelligence shall serve as the final authority'';

(iii) by striking ''Security Policy Board'' and inserting in lieu thereof ''Security Executive Agent'' in each instance;

(iv) by striking ''the Board'' in section 1.1(j) and inserting in lieu thereof ''the Security Executive Agent''; and

(v) by inserting ''or appropriate automated procedures'' in section 3.1(b) after ''by appropriately trained adjudicative personnel''.

(c) Nothing in this order shall supersede, impede, or otherwise affect the remainder of Executive Order 12968 of August 2, 1995, as amended.

(d) Executive Order 12171 of November 19, 1979, as amended, is further amended by striking ''The Center for Federal Investigative Services'' in section 1–216 and inserting in lieu thereof ''The Federal Investigative Services Division.''

(e) Nothing in this order shall be construed to impair or otherwise affect the:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(f) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(g) Existing delegations of authority made pursuant to Executive Order 13381 of June 27, 2005, as amended, to any agency relating to granting eligibility for access to classified information and conducting investigations shall 13 remain in effect, subject to the exercise of authorities pursuant to this order to revise or revoke such delegation.

(h) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order shall not be affected.

(i) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, instrumentalities, or entities, its officers or employees, or any other person.

THE WHITE HOUSE,
June 30, 2008.

[FR Doc. 08–1409
Filed 7–1–08; 11:00 am]
Billing code 3195–W8–P

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To revise the short title of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006. (July 1, 2008; 122 Stat. 2428)

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